United States Court of Appeals

for the Second Circuit

APPENDIX

76-7612

PRIMA

In The

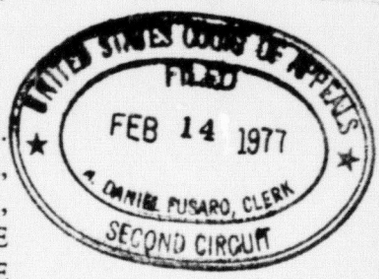
United States Court of Appeals

For The Second Circuit

LOCAFRANCE U.S. CORPORATION,

Plaintiff-Appellant,

-against-



INTERMODAL SYSTEMS LEASING, INC., DANIEL H. OVERMYER, SHIRLEY OVERMYER, JOHN OVERMYER, ELIZABETH OVERMYER, EDWARD OVERMYER, BARBARA STRANG AND "JOHN DOE", THAT NAME BEING FICTITIOUS, THE TRUE NAME OF THE DEFENDANT BEING UNKNOWN TO PLAINTIFF AND THE PERSON INTENDED BEING TRUSTEE f/t/b OF DEFENDANTS JOHN OVERMYER, ELIZABETH OVERMYER, EDWARD OVERMYER AND BARBARA STRANG,

Defendants-Appellees.

B P/S

On Appeal from a Judgment Entered in the United States District Court for the Southern District of New York.

JOINT APPENDIX

REGAN GOLDFARB HELLER WETZLER & QUINN
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	DEFENDANTS
LOCAFRANCE U.S. CORPORATION,	INTEMODAL SYSTEMS LEASING, INC. DANIEL H. OVERMYER, SHIRLEY OVERMYER, ELIZABETH OVERMYER, EDWARD OVERMYER, BARBARA STRANG, AND JOHN DOE, THAT NAME BEING FICTITIOUS, THE TRUE NAME OF THE DEFT BEING UNKNOWN TO PLAINTIFF AND THE PERSON INTENDED BEING TRUSTEE f/t/b of DEFTS JOHN OVERMYER, ELIZABETH OVERMYER, EDWARD OVERMYER, AND BARBARA STRANG.

CAUSE

S.E.C. ACT. 1933 & 1934

ATTORNEYS

REGAN, GOLDFARB, HELLER WETZLER & QUINN. 445 PARK AVENUE, NYC, N.Y. 10022 PL4-3000	Intermodal Systems., D.H. Overmyer, S. Overmyer, J. Overmyer, E. Overmyer and Myer Overmyer. EASTON & ECHTMAN 6 E.39 St. NYC 10016

UNITED STATES COURT OF APPEALS
FILED
JAN. 10, 1977
H. Daniel Fascaro, Clerk
SECOND CIRCUIT

Date	Statistical Cards	
	Card	Date Mailed
Jun. 7, 1976	JS-6	X

s/ Raymond F. Buyhardt
Clerk of the Court

DATE	PROCEEDINGS JUDGE LASKER
6-7-76	Filed Complaint, Issued Summons.
7-29-76	Filed Summons with Marshall Ret. Served: S. Overmyer by J. Overmyer-Son on 7-16-76 E.H. Overmyer by " " " " E. Overmyer by Per. Service " " E. Overmyer by J. Overmyer-Bros." " J. Overmyer by Per. Service " " International Sys. Leasing Inc. by NOti Served " " " " " "
8-12-76	Fld Marshal's ret served Intermodal Sys Leasing by Jane Doe on 7-21-76
8-13-76	Fld Order that defts time to answer the complit is ext to 9-2-76....Brieant, J. mn
9-2-76	Fld Order that defts time to answer is ext to 9-7-76 . . . . . Brieant, J. mn
9-8-76	Fld Defts Intermodal., D.H. Overmyer, S. Overmyer, J. Overmyer, E. Overmyer and E. Overmyer's motion to dismiss purto pltffs' claims being barred..upon failure to state a claim upon which relief can be granted etc. ret 9-1-76 9:30AM Rm 1506.
9-8-76	Fld Defts' memo of law in support of their motion to dismiss.
9-15-76	Fld Stip & Order that defts' motion to dismiss the complt is adj to 10-7-76, etc.-....Brieant, J.
9-29-76	Fld Pltff's Locafrance's affdvt in opposition to defts' motion to dismiss the complt.
10-8-76	Fld Stip & order that defts' motion to dismiss is adj to 10-13-76-9:30 AM Rm 1306...etc...Brieant, J.
10-13-76	Fld Defts Intermoda' Sys., D.H. Overmyer., S. Overmyer., J. Overmyer., E. Overmyer and E. Overmyer's Reply Affdvt in further support of defts motion to dismiss.
10-13-76	Fld Defts memo in further support of its motion to dismiss.

DATE	PROCEEDINGS	JUDGE LASKER
11-5-76	Fld Pltff's affdvt in further opposition to deft's motion to dismiss complt.	
11-9-76	Fld Pltff's Surreply memo in opposition to defts' motion to dismiss.	
11-9-76	Fld Pltff's affdvt in further opposition to deft's motion to dismiss complt.	
11-10-76	Fld. Memo End on motion of 9-8-76 Motion for sum judg granted and Complaint dismissed. See Transcript this date. So Ordered...Brieant,J.mn	
11-16-76	Fld Judgment..Ordered..that Deft's Intermodal Systems Leasing, D.H. Overmyer, S. Overmyer, J. Overmyer, E. Overmyer, Ed. Overmyer, B. Strang and "John Doe" that name being fictitious, the true name of the defendant being unknown to Pltff and the person intended being trustee f/t/b of deft's J. Overmyer, E. Overmyer, Ed. Overmyer and B. Strang, have judgment against pltff. Locafranceu S. Corporation dismissing the complaint..R.F.Burghardt-Clerk. mn	
12-8-76	Fld Pltff's Notice of Appeal to USCA from Judgment 11-16-76. Copy mailed on 12-8-76 to: Easton & Echtman	

A TRUE COPY
RAYMOND F. BURGHARDT, Clerk

By J.P. Finn
Deputy Clerk

UNITED STATES COURT
OF APPEALS
FILED
JAN 10, 1977
SECOND CIRCUIT

s/ Raymond F. Burghardt
Clerk of the Court

SUMMONS IN A CIVIL ACTION

SUMMONS
(Filed July 29, 1976)

CIV. 1 (2-61)
(Formerly D. C. Form No. 1; Rev. (6-59))

United States District Court

FOR THE

SOUTHERN DISTRICT OF NEW YORK

CIVIL ACTION FILE NO. 76 [illegible]

LOCAFRANCE U.S. CORPORATION,

Plaintiff

v.

INTERMODAL SYSTEMS LEASING, INC. DANIEL H. OVERMYER, SHIRLEY OVERMYER, JOHN OVERMYER, ELIZABETH OVERMYER, EDWARD OVERMYER, BARBARA STRANG AND "JOHN DOE", THAT NAME BEING FICTITIOUS, THE TRUE NAME OF THE DEFENDANT BEING UNKNOWN TO PLAINTIFF AND THE PERSON INTENDED BEING TRUSTEE f/t/b OF DEFENDANTS JOHN OVERMYER, ELIZABETH OVERMYER, EDWARD OVERMYER AND BARBARA STRANG,

Defendant

SUMMONS

To the above named Defendant :

You are hereby summoned and required to serve upon REGAN GOLDFARB HELLER WETZLER & QUINN

plaintiff's attorney, whose address is 445 Park Avenue, New York, New York 10022

an answer to the complaint which is herewith served upon you, within 20 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

[illegible]
Clerk of Court.

[illegible]
Deputy Clerk.

Date: New York, New York
June 4, 1976

[Seal of Court]

NOTE—This summons is issued pursuant to Rule 4 of the Federal Rules of Civil Procedure.

COMPLAINT
(Filed June 7, 1976) (pp.5a-16a)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

LOCAFRANCE U. S. CORPORATION, PLAINTIFF, -AGAINST- INTERMODAL SYSTEMS LEASING, INC., DANIEL H. OVERMYER, SHIRLEY OVERMYER, JOHN OVERMYER, ELIZABETH OVERMYER, EDWARD OVERMYER, BARBARA STRANG AND "JOHN DOE", THAT NAME BEING FICTITIOUS, THE TRUE NAME OF THE DEFENDANT BEING UNKNOWN TO PLAINTIFF AND THE PERSON INTENDED BEING TRUSTEE f/t/b OF DEFENDANTS JOHN OVERMYER, ELIZABETH OVERMYER, EDWARD OVERMYER AND BARBARA STRANG, DEFENDANTS.	COMPLAINT 76 CIV. 3515 ( ) LASKER

Plaintiff, complaining of Defendants, by its attorneys, REGAN GOLDFARB HELLER WETZLER & QUINN, alleges:

1. Jurisdiction of this Court over:

A. The First, Second and Third Claims herein is based upon Section 22(a) of the Securities Act Of 1933 (15 U.S.C. §77v(a));

B. The Fourth Claim herein is based upon Section 27 of the Securities Exchange Act Of 1934 (15 U.S.C. §78aa);

C. The Fifth, Sixth and Seventh Claims herein is based upon the principle of pendent jurisdiction and the matter in controversy exceeds exclusive of interest and costs, the sum of Ten Thousand Dollars ($10,000.00).

2. Plaintiff, LOCAFRANCE U. S. CORPORATION, is a corporation organized and existing under and by virtue of the laws of the State Of Delaware with offices at 20 Woodsbridge Road, Katonah, New York.

3. Upon information and belief, Defendant INTERMODAL SYSTEMS LEASING, INC. ("ISLI") is a corporation organized and existing under the laws of the State Of New York with its principal place of business at 201 East 42nd Street, New York, New York.

4. Upon information and belief, Defendant DANIEL H. OVERMYER ("OVERMYER") is a resident of the State Of New York and is a controlling person of Defendant ISLI as such term is used in the Securities Act Of 1933, as amended and in the Securities Exchange Act Of 1934, as amended.

5. Upon information and belief, Defendant SHIRLEY OVERMYER ("SHIRLEY") is a resident of the State Of New York and is a controlling person of Defendant ISLI as such term is used in the Securities Act Of 1933, as amended and in the Securities Exchange Act Of 1934, as amended.

6. Upon information and belief, Defendant JOHN OVERMYER ("JOHN") is a resident of the State Of New York and is a controlling person of Defendant ISLI as such term is used in the Securities Act Of 1933, as amended and in the Securities Exchange Act Of 1934, as amended.

7. Upon information and belief, Defendant ELIZABETH OVERMYER ("ELIZABETH") is a resident of the State Of New York

and is a controlling person of Defendant ISLI as such term is used in the Securities Act Of 1933, as amended and in the Securities Exchange Act Of 1934, as amended.

8. Upon information and belief, Defendant EDWARD OVERMYER ("EDWARD") is a resident of the State Of New York and is a controlling person of Defendant ISLI as such term is used in the Securities Act Of 1933, as amended and in the Securities Exchange Act Of 1934, as amended.

9. Upon information and belief, Defendant BARBARA STRANG ("BARBARA") is a resident of the State Of Missouri and is a controlling person of Defendant ISLI as such term is used in the Securities Act Of 1933, as amended and in the Securities Exchange Act Of 1934, as amended.

10. Upon information and belief "JOHN DOE" that name being fictitious, the true name of the Defendant being unknown to the Plaintiff and is the Trustee for the benefit of Defendants JOHN, ELIZABETH, EDWARD and BARBARA.

11. On or about May 31, 1972, Plaintiff and ISLI entered into a sale leaseback arrangement involving fifty (50) forklift trucks whereby Plaintiff was to receive, as a return on its investment, $2,712.50 monthly for a period of thirty-six (36) months.

12. On or about December 7, 1972, Plaintiff and ISLI entered into a sale leaseback arrangement involving one hundred and seventy-nine (179) forklift trucks whereby Plaintiff was to receive, as a return on its investment, $15,343.44 monthly for a period of thirty-six (36) months.

13. On or about June 21, 1973, Plaintiff and ISLI entered into a sale leaseback arrangement involving forty-seven (47) forklift trucks and various other equipment whereby Plaintiff was to receive as a return on its investment, $15,804.07 monthly for a period of forty-eight (48) months.

14. On or about August 15, 1974, Plaintiff and ISLI modified their prior sale leaseback arrangements and Plaintiff agreed to lease to ISLI thirty-three (33) forklift trucks whereby Plaintiff was to receive the sum of $3,675.00 monthly as a return on its investment for a period of thirty-six (36) months.

15. On or about August 15, 1974, Plaintiff and ISLI modified their prior sale leaseback arrangements and Plaintiff agreed to lease to ISLI telecasting equipment whereby Plaintiff was to receive the sum of $550.00 monthly as a return on its investment for a period of fifty-four (54) months.

16. The foregoing sale leaseback arrangements constituted investment contracts and securities within the meaning of the Securities Act Of 1933, as amended and the Securities Act Of 1934, as amended.

17. The foregoing sale leaseback arrangements were negotiated by OVERMYER on behalf of ISLI.

18. ISLI has defaulted on each of the foregoing sale leaseback arrangements.

19. In connection with and in the course of the said sale leaseback arrangements, Defendants communicated to Plaintiff the following untrue statements of material fact, inter alia:

A. In or about May, 1972, Plaintiff was advised that all of the OVERMYER companies, affiliates and subsidiaries, including ISLI, were wholly owned by OVERMYER;

B. That ISLI'S August 31, 1968 financial statement was in all respects true and accurate;

C. That ISLI'S financial statements for the period April, 1972 through August, 1974 were, in all respects, true and accurate;

D. That financial statements of D. H. OVERMYER COMPANY, INC. as of August 31, 1970, were, in all respects, true and accurate;

E. In or about December, 1972 OVERMYER stated that all of the OVERMYER companies, affiliates and subsidiaries were experiencing substantial cash flow;

F. In or about November, 1972 OVERMYER stated that ISLI was executing approximately $1,000,000.00 per month in leases;

G. In or about June, 1973 OVERMYER stated that he owned a series of television stations;

H. In or about June, 1973 OVERMYER stated that the OVERMYER companies, affiliates and subsidiaries had substantial cash profits;

I. In or about June, 1973 OVERMYER stated that he owned all of the OVERMYER companies, affiliates and subsidiaries in their entirety;

J. In or about June, 1973 OVERMYER stated that the OVERMYER companies, affiliates and subsidiaries owned real estate

having a market value of $248,000,000.00;

K. In or about September, 1973 OVERMYER stated that he had negotiated a Eurodollar loan in the amount of $10,000,000.00;

L. Prior to the execution of each of the foregoing sale leaseback arrangements ISLI and OVERMYER represented that there had been no material adverse change in the financial condition of ISLI, as previously represented to PLAINTIFF.

20. In connection with the said sale leaseback arrangements, Defendants omitted to state material facts necessary in order to make the foregoing statements, in the light of the circumstances under which they were made, not misleading and intended that Plaintiff should believe and act thereon and Defendants omitted to state to Plaintiff, the following material facts, inter alia, known to them:

A. That the OVERMYER companies, affiliates and subsidiaries did not, in fact, own substantially all the warehouses;

B. That warehouses were being closed and eliminated;

C. That the OVERMYER companies, affiliates and subsidiaries were involved in extensive and substantial litigation as Defendants.

21. Upon information and belief, the said statements, representations and omissions were materially untrue and incomplete and were made with a reckless disregard for their truth and

the interests of Plaintiff and Defendants knew or should have known with the exercise of reasonable care that the said statements, representations and omissions were materially untrue and incomplete.

22. Plaintiff did not know of the said omissions and did not know that the said material statements and representations of the Defendants to Plaintiff were untrue or incomplete as aforesaid and Plaintiff relied upon the said statements and representations and was thereby induced to enter into the aforesaid sale leaseback arrangements.

23. The foregoing allegations are repeated and realleged in each of the following claims with the same force and effect as if fully alleged therein.

AS AND FOR A FIRST CLAIM

24. This claim is instituted pursuant to Section 12(2) of the Securities Act Of 1933 (15 U.S.C. §77L) for rescission of the said sale leaseback arrangements or for damages, together with the costs of suit and reasonable attorneys' fees, as a result of Defendants' violations of Section 12(2) of said Act as hereinafter alleged.

25. The said sale leaseback arrangements violated Section 12(2) of the Securities Act Of 1933 in that they were investment contracts and securities and that they constituted or involved sales or offers of sales of securities by the use of means or instruments of transportation or communication in interstate commerce or of the mails, by means of prospectuses or oral communications, which included, unknown to Plaintiff, untrue

statements of material facts or omissions to state material facts necessary in order to make the statements, in the light of the circumstances under which they were made, not misleading.

26. Plaintiff hereby makes formal tender to Defendants of all of its right, title and interest in and to the said sale leaseback arrangements.

27. By reason of the foregoing, Plaintiff has been damaged in the amount of Seven Hundred Twenty-Three Thousand One Hundred and Four Dollars ($723,104.00).

AS AND FOR A SECOND CLAIM

28. This claim is instituted pursuant to Section 17(a) of the Securities Act Of 1933 (15 U.S.C. §77q) for rescission of the said sale leaseback arrangements or for damages, together with the costs of suit and reasonable attorneys' fees as a result of Defendants' violations of Section 17(a) of said Act as hereinafter alleged.

29. Defendants, in contravention of Section 17(a) of the Securities Act Of 1933, sold or offered to sell to Plaintiff the said sale leaseback arrangements which were investment contracts and securities by the use of means or instruments of transportation or communication in interstate commerce or by use of the mails, and directly or indirectly (a) employed a device, scheme or artifice to defraud Plaintiff, (b) obtained money or property from Plaintiff by means of untrue statements of material facts or omissions to state material facts necessary in order to make the statements made, in the light of the circumstances under which

they were made, not misleading; and (c) engaged in transactions, practices and a course of business which operated as a fraud and deceit on Plaintiff.

30. Plaintiff hereby makes formal tender to Defendants of all of its right, title and interest in and to the said sale leaseback arrangements.

31. By reason of the foregoing, Plaintiff has been damaged in the amount of Seven Hundred Twenty-Three Thousand One Hundred and Four Dollars ($723,104.00).

AS AND FOR A THIRD CLAIM

32. This claim is instituted pursuant to Section 10(b) of the Securities Exchange Act Of 1934 (15 U.S.C. §78j) and Rule 10b-5 (19 C.F.R. §240. 10b-5) promulgated thereunder for rescission of the said sale leaseback arrangements or for damages together with the costs of suit and reasonable attorneys' fees, as a result of Defendants' violations of the foregoing Act and Rule.

33. Defendants, in contravention of Section 10B of the Securities Exchange Act Of 1934 and Rule 10b-5 promulgated thereunder by use of means or instrumentalities of interstate commerce or the mails, (a) employed a device, scheme or artifice to defraud Plaintiff, (b) made untrue statements of material facts or omissions to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading, and (c) engaged in transactions, practices and a course of business which operated as a fraud and deceit on Plaintiff.

34. Plaintiff hereby makes formal tender to Defendants of all of its right, title and interest in and to the said sale leaseback arrangements.

35. By reason of the foregoing, Plaintiff has been damaged in the amount of Seven Hundred Twenty-Three Thousand One Hundred and Four Dollars ($723,104.00).

AS AND FOR A FOURTH CLAIM

36. This action is instituted pursuant to Section 352-c of the General Business Law of the State of New York.

37. ISLI and OVERMYER in contravention of Section 352-c of the General Business Law of the State of New York used the following acts or practices to induce or promote the issuance, distribution, exchange, purchase, negotiation, and sale of the said sale leaseback arrangements to Plaintiff within and from New York State, (a) fraud, deception, concealment, suppression and false pretense, (b) promises and representations as to the future which were beyond reasonable expectation and unwarranted by existing circumstances, (c) representations or statements which were false, where ISLI and OVERMYER

(i) knew the truth;

(ii) or with reasonable effort could have known the truth;

(iii) or made no reasonable effort to ascertain the truth;

(iv) or did not have knowledge concerning the representations or statements made.

38. By reason of the foregoing, Plaintiff has been damaged in the amount of Seven Hundred Twenty Three Thousand One

Hundred and Four Dollars ($723,104.00).

AS AND FOR A FIFTH CLAIM

39. The said untruths and omissions were intentionally, knowingly, recklessly and fraudulently made by ISLI and OVERMYER to induce Plaintiff to rely upon ISLI'S and OVERMYER'S statements as true and complete in all respects and in reliance thereon to purchase the said securities to their detriment and to the financial benefit of ISLI and OVERMYER and Plaintiff relied on the said untruths and omissions and Plaintiff was thereby induced to purchase and enter into the said sale leaseback arrangements.

40. By reason of the foregoing, Plaintiff has been damaged in the amount of Seven Hundred Twenty-Three Thousand One Hundred and Four Dollars ($723,104.00).

AS AND FOR A SIXTH CLAIM

41. ISLI and OVERMYER had a duty to Plaintiff to disclose its actual financial condition at the time it sold or offered to sell the said sale leaseback arrangements and to inform Plaintiff of the said actual financial condition.

42. ISLI and OVERMYER negligently and carelessly failed and refused to perform their duty of disclosing ISLI'S actual financial condition and the actual financial condition of the OVERMYER companies, affiliates and subsidiaries at the time they sold or offered to sell the said sale leaseback arrangements and informing Plaintiff of the said actual financial condition.

43. By reason of the foregoing and without any negli-

gence of the Plaintiff contributing thereto, Plaintiff has been damaged in the amount of Seven Hundred Twenty-Three Thousand One Hundred and Four Dollars ($723,104.00).

WHEREFORE, Plaintiff demands:

1. Judgment in its favor:

A. Rescinding the said sale leaseback arrangements; and

B. Compelling Defendants to repay to Plaintiff all consideration received by Defendants from Plaintiff for said securities, together with interest thereon; or

C. Alternatively awarding damages to Plaintiff in the amount of $723,104.00 together with interest thereon;

2. The costs, disbursements and expenses of this action, including reasonable attorneys' fees;

3. Such other and further relief as may be necessary and appropriate.

REGAN GOLDFARB HELLER WETZLER & QUINN

Hal Bubl P.C.

By Hal Bubl

A MEMBER OF THE FIRM
ATTORNEYS FOR PLAINTIFF
445 Park Avenue
New York, New York 10022
Tel. No. 754-3000

DEFENDANTS MOTION TO DISMISS THE COMPLAINT (Filed September 8, 1976) (pp. 17a-20a)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

LOCAFRANCE U.S. CORPORATION,

Plaintiff,

- against -

INTERMODAL SYSTEMS LEASING, INC., DANIEL H. OVERMYER, SHIRELY OVERMYER, JOHN OVERMYER, ELIZABETH OVERMYER, EDWARD OVERMYER, BARBARA STRANG and "JOHN DOE", that name being fictitious, the true name of the defendant being unknown to plaintiff and the person intended being trustee f/t/b of defendants JOHN OVERMYER, ELIZABETH OVERMYER, EDWARD OVERMYER, and BARBARA STRANG,

Defendants.

CIVIL ACTION
FILE NO.76 Civ. 2515

JUDGE BRIEANT

MOTION TO DISMISS

Defendants, INTERMODAL SYSTEMS LEASING, INC., DANIEL H. OVERMYER, SHIRLEY OVERMYER, JOHN OVERMYER, ELIZABETH OVERMYER, and EDWARD OVERMYER, by their attorneys, Easton & Echtman, P.C., move the Court at 9:30 A.M. on the 14th day of September, 1976, or as soon thereafter as counsel may be heard, at Room 1506, U.S. District Courthouse, Foley Square, New York, as follows:

1. To dismiss the action because plaintiff's claims are barred by an accord and satisfaction and accordingly the complaint fails to state a claim upon which relief can be granted.

2. To dismiss the action because plaintiff's claims are barred by a release duly executed by plaintiff and accordingly the complaint fails to state a claim upon which relief can be granted.

3. To strike paragraphs 24, 25, 26, and 27, of the complaint which purport to state a cause of action under §12(2) of the Securities Act of 1933 (15 USC §772), on the grounds that :

(a) this claim is barred by the statute of limitations, §13 of the

Securities Act of 1933(15 USC §77n); and (b) it does not affirmatively appear on the face of the complaint when the alleged fraud was discovered and that the instant action was commenced within the time limitations prescribed by the statute of limitations, §13 of the Securities Act of 1933(15 USC §77n).

In the alternative, to require plaintiff to file a more definite statement setting forth the dates on which each of the alleged frauds was discovered, on the ground that plaintiff's complaint is so vague and ambiguous on this matter that the defendants cannot reasonably be required to frame an answer thereto.

4. To strike the sixth cause of action of the complaint on the grounds that (a) this claim is barred by the applicable statute of limitations, CPLR §214; and (b) it does not affirmatively appear on the face of the complaint that the instant action was commenced within the aforesaid statute of limitations.

5. To dismiss the action on the ground that the Court lacks jurisdiction over the subject matter since the complaint does not disclose a single instance of the use of the mails, the use of any means or instrumentality of interstate commerce, or the use of any facility of any national securities exchange.

In the alternative, to require plaintiff to file a more definite statement setting forth with particularity the circumstances of each use of the mails, of any means or instrumentality of interstate commerce, or of any facility of any national securities exchange, on the ground that plaintiff's complaint is so vague and ambiguous on this matter that the defendants cannot reasonably be required to frame an answer thereto.

6. To dismiss the action as to the defendant trustee on the ground that a "John Doe" complaint such as that of the plaintiff

herein is neither authorized nor permitted under federal practice.

7. To dismiss the action as to the defendants JOHN OVERMYER, ELIZABETH OVERMYER, and EDWARD OVERMYER on the ground of insufficiency of service of process.

8. To dismiss the action as to the defendant ISLI on the ground of insufficiency of service of process.

9. To dismiss the action for the failure of plaintiff to comply with Federal Rule of Civil Procedure 9(b) which requires that the circumstances constituting fraud be stated with particularity.

In the alternative, to require plaintiff to file a more definite statement setting forth with particularity the circumstances allegedly constituting fraud.

10. To dismiss the action because it appears on the face of the complaint that the claim, if any, is barred by the laches and delay of plaintiff and accordingly the complaint fails to state a claim upon which relief can be granted.

11. To strike the fourth, fifth and sixth causes of action of the complaint on the ground that the Court lacks jurisdiction over the subject matter.

12. To dismiss the action as to defendants JOHN OVERMYER, ELIZABETH OVERMYER and EDWARD OVERMYER because none of them is a "controlling person" and accordingly the complaint fails to state a claim upon which relief can be granted.

13. To require the plaintiff to post security for costs in compliance with §11(e) of the Securities Act of 1933 (15 USC §77k).

WHEREFORE, defendants pray the Court that the action be

dismissed and for such other, further, and different relief as may be just and proper in the premises.

Dated: New York, New York
September 7, 1976

EASTON & ECHTMAN, P.C.
Attorneys for Defendants
Intermodal Systems Leasing, Inc.,
Daniel H. Overmyer, Shirley Overmyer,
John Overmyer, Elizabeth Overmyer,
and Edward Overmyer
Office & P.O. Address
6 East 39th Street
New York, New York 10016

AFFIDAVIT OF DAVID RAIBLE IN SUPPORT OF MOTION
(Filed October 13, 1976) (pp. 21a-25a)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------x

LOCAFRANCE U.S. CORPORATION,

Plaintiff,

-against-

INTERMODAL SYSTEMS LEASING, INC., DANIEL H. OVERMYER, SHIRLEY OVERMYER, JOHN OVERMYER, ELIZABETH OVERMYER, EDWARD OVERMYER, BARBARA STRANG and "JOHN DOE", that name being fictitious, the true name of the defendant being unknown to plaintiff and the person intended being trustee f/t/b of defendants JOHN OVERMYER, ELIZABETH OVERMYER, EDWARD OVERMYER and BARBARA STRANG,

Defendants.

CIVIL ACTION
FILE NO. 76 Civ 2515

JUDGE BRIEANT

AFFIDAVIT OF DAVID RAIBLE IN SUPPORT OF DEFENDANTS' MOTION TO DISMISS.

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STATE OF NEW YORK)
) SS.:
COUNTY OF NEW YORK)

DAVID RAIBLE, being duly sworn, deposes and says:

I am President of defendant Intermodal Systems Leasing, Inc., (hereinafter called "ISLI") and I submit this affidavit in support of defendants' motion to dismiss.

ISLI is a business corporation engaged in renting fork-lift trucks and other equipment necessary to the maintenance of warehouses. In 1972 and 1973, ISLI entered into sale-leaseback contracts with Locafrance in order to raise working capital. Approximately 276 fork-lift trucks used by ISLI were involved in the contracts with Locafrance. Actual ownership, control, and maintenance of the trucks remained with ISLI and ISLI had an option to repurchase the trucks for the token sum

of one dollar at the end of the lease period. In addition to the substantial rentals that Locafrance would receive, Locafrance also obtained tax advantages from depreciation on the trucks. There was no public offering. The sole parties to the transaction were Locafrance and ISLI.

In November, 1973, various warehouse companies of the Overmyer organization were placed in Chapter XI corporate reorganization proceedings. ISLI, however, was not a part of this reorganization. A plan was formulated by the receiver whereby the use of the Overmyer warehouses throughout the United States would be changed in order to revitabelize the financial condition of the Overmyer companies. This plan for the warehouses meant that ISLI would have to deal with numerous new corporations hitherto unknown to it and to develop new business relations on a large scale.

At this point Locafrance offered its assistance and proposed that Locafrance send employees throughout the United States to execute leases on behalf of ISLI with its customers. Locafrance stated that in this way a continued high return on its capital might be insured. Accordingly, ISLI supplied Locafrance with a customer's list and inventory records to enable this project to go forward.

Locafrance's true intentions soon became apparent. Far from assisting ISLI, Locafrance used the confidential information given to it to locate and repossess trucks, to sell the fork-lifts to a third party, to alienate customers from ISLI and to solicit customers for Locafrance. Towards this end, Locafrance hired

a former employee of ISLI to gain further unethical advantages, made numerous misrepresentations to ISLI's customers, and even threatened some customers with criminal sanctions.

In order to protect the fork-lifts and stop these practices, ISLI brought suit in the Illinois courts on April 4, 1974, against Locafrance and against one Atlas Corp., a corporation to which Locafrance had attempted to sell the fork-lift trucks. ISLI sought to enjoin and set aside the sale of its forklifts by Locafrance to Atlas. Hearings were held on the injunction question. During the course of those hearings, which took place over a period of a number of weeks, Locafrance's agents stated several times that ISLI had defrauded Locafrance by submitting inaccurate financial statements, making false statements about its cash flow, making false statements about its profitability and assets, and concealing the fact that certain Overmyer companies were about to file for reorganization under Chapter XI of the Bankruptcy Act, which filing occurred in November, 1973. Although these allegations by Locafrance were denied, they nevertheless show conclusively that if a fraud was perpetrated, Locafrance knew of it by November, 1973. The first purported service in this action was not made until more than two years later.

On or about June 18, 1974, protracted settlement negotiations between ISLI and Locafrance were concluded. A copy of the settlement agreement is attached hereto as Exhibit A. The settlement agreement was amended June 28, 1974 and a copy of the amendment agreement is annexed hereto as Exhibit B. Pursuant to this settlement, Locafrance duly executed a release, a copy of which

is attached hereto as Exhibit C, exonerating ISLI from all liability in connection with the sale leaseback transactions.

This accord and satisfaction and full release of ISLI from all liability is referred to in the complaint at paragraphs 14 and 15 as a "modification".

As part of the settlement, Locafrance agreed to return 33 of the forklift trucks to ISLI. Further as part of the settlement, ISLI and Locafrance executed a new lease, on or about August 15, 1974. This is the transaction referred to in paragraph 14 of the complaint. Thus ISLI received back 33 forklifts and Locafrance was permitted to sell the remaining 233 forklifts to Atlas.

Since the issues between ISLI and Locafrance regarding ISLI's default (see Exhibit A) were settled in 1974, it is somewhat strange to see Locafrance, in the latter part of 1976, starting litigation, alleging fraud in the 1972 and 1973 transactions. None of the allegations of fraud set forth in paragraphs 19 and 20 of the complaint relate to the August 15, 1974 lease agreement between ISLI and Locafrance. All relate to pre-Chapter XI circumstances, and therefore antedate November, 1973.

If in fact there were any fraudulent misrepresentations about the financial strength of the Overmyer companies, these must have become apparent to Locafrance by November, 1973, when the Overmyer companies entered into Chapter XI proceedings. In any event, a memorandum of T.J. Byrnes, attached hereto as Exhibit "D", indicates that representatives of Locafrance were

aware of the alleged fraud at least as early as March 27, 1974. Hence Locafrance was cognizant of its potential fraud action months before Locafrance entered into the settlement agreement.

In its release given to ISLI, Locafrance could have reserved its rights to bring the present action, but Locafrance did not reserve these rights, However, the present action has nothing to do with securities law violations. The present action is nothing more than a contractual dispute disguised by allegations relating to the securities laws. It is merely another example of the larger corporation trying to harrass, oppress, and coerce the smaller corporation into yielding concessions. In view of the background to this litigation, Locafrance's complaint should be dismissed.

In the event the court is not inclined to dismiss the complaint it is respectfully requested that plaintiff be required to post a bond in the sum of $300,000.

In the Illinois action, where a hearing on a motion for an injunction was followed by prolonged settlement negotiations which resulted finally in a settlement agreement, ISLI incurred legal fees of approximately $50,000.00. Here, if this action is to proceed through motions, discovery, and trial, legal fees could easily approach or exceed $250.000. Therefore, ISLI requests that plaintiff post a bond in the amount of $300,000 to cover both legal fees and other costs.

DAVID RAIBLE

Sworn to before me this
day of , 1976.

EXHIBITS ANNEXED TO FOREGOING AFFIDAVIT

AGREEMENT, made as of this day of June, 1974 by and between LOCAFRANCE U.S. CORPORATION, with a place of business at Third Avenue, New York, New York 10022 ("Locafrance") and INTERMODAL SYSTEMS LEASING, INC., with a place of business at 29 West 34 Street, New York, New York 10001 ("ISLI").

RECITALS

A. By Locafrance Lease No. 057/82/000 021/0, Locafrance leased to ISLI the equipment described on Schedule "A" annexed thereto for a term of 36 months commencing May 15, 1972 at a monthly rental of $2,712.50 (Lease "A"), and ISLI is in default thereunder.

B. By Locafrance Lease No. 057/82/000 041/0, Locafrance leased to ISLI the equipment described on Schedule "A" annexed thereto for a term of 36 months commencing December 15, 1972 at a monthly rental of $15,343.44 (Lease "B"), and ISLI is in default thereunder.

C. By Locafrance Lease No. 057/82/000 071/0, Locafrance leased to ISLI the equipment described on Schedule "A" annexed thereto for a term of 48 months commencing June 15, 1973 at a monthly rental of $15,804.07 (Lease "C"), and ISLI is in default thereunder. (Lease "A", Lease "B" and Lease "C" hereinafter collectively sometimes referred to as the "Leases" and the equipment described thereon hereinafter collectively sometimes referred to as the "Equipment", a schedule of all of the Equipment being annexed hereto as Schedule "A").

D. Locafrance and ISLI entered into an Agreement,

dated December 18, 1973, and amended the same and the Leases by Amendmendment dated January 17, 1974, which Agreement and Amendment relate to ISLI's default under the Leases and amended the Leases. 27a

E. By Purchase Order No. 10426 of Atlas Lift Truck Rentals & Sales, Inc. ("Atlas") dated January 25, 1974, and Locafrance's acceptance dated January 29, 1974, Locafrance agreed to sell and Atlas agreed to purchase certain of the Equipment from Locafrance (the Purchase Order and the acceptance, and as they may be further modified, hereinafter the "Atlas Order") and Atlas has, in fact, purchased certain of the Equipment. A schedule of the Equipment which Atlas agreed to Purchase (the "Atlas Equipment") is annexed hereto as Schedule "B". Locafrance reasonably expects to receive $600,000 from the sale of the Atlas Equipment pursuant to the Atlas Order.

F. There is presently pending in The Circuit Court of Cook County, Illinois County Department, Chancery Division, an action entitled "Intermodal Systems Leasing, Inc. Plaintiff, vs. Atlas Forklift Truck Rental and Sales, Inc. and Locafrance U.S. Corporation, Defendants," No. 74CH1972 (the parties to said action being the same parties as the parties to this Agreement).

G. Locafrance, Atlas and ISLI have agreed to a resolution and settlement of the disputes that have arisen between and among them including, but not limited to, the action more particularly described in Recital "F".

NOW, THEREFORE, in consideration of the mutual promises and covenants hereinafter set forth, it is agreed as follows:

1. The Recitals hereinabove set forth and the Schedules annexed hereto, are included in, and made part of, this Agreement as though set forth at length herein.

2. ISLI consents, agrees and acknowledges that ISLI is indebted to Locafrance as a result of ISLI's being in default

under the Leases. Locafrance and ISLI do hereby agree to 28a
settle and compromise the amount of such indebtedness as of the date hereof at $600,000 subject to increase or decrease as hereinafter provided (the amount of such indebtedness, together with any increase, or decrease thereof, as the case may be hereinafter the "Indebtedness"). To the extent that Locafrance receives less than $600,000 from the sale of the Atlas Equipment pursuant to the Atlas Order, the Indebtedness shall be increased by the amount of such deficiency. For the purposes of such determination, the amount that Locafrance shall not receive from Atlas as a consequence of the transaction provided for in Section 9 and Section 10 hereof, calculated in accordance with the Atlas Order, shall not be deducted from the $600,000 amount except as provided for in Section 22 hereof. ISLI consents, agrees and acknowledges that as of the date hereof, it is indebted to Locafrance in the amount of $600,000 as a result of its defaults under the Leases and ISLI covenants to pay the Indebtedness to Locafrance as hereinafter provided.

3. The action more particularly described in Recital "F" shall be dismissed by ISLI, with prejudice, and the parties agree to execute such additional and further documents, and cause such of them as must be filed with the Court to effect the dismissal to be filed. The dismissal shall be without costs to any party as against the others.

4. ISLI consents and agrees that it shall not commence any action or any proceeding in any jurisdictions or in any forum, or take or cause to be taken any action or any proceeding, against Locafrance and Atlas, or either of them, to

seek any recovery from Atlas or prevent, or attempt to prevent, (i) Locafrance from enforcing its rights under the Leases or under this Agreement including, but not limited to, obtaining possession of the Equipment wherever it may presently be located, and (ii) Locafrance and Atlas, or either of them, from consummating the Atlas Order as the same presently exists or as the same may be modified. The preceding sentence shall not preclude ISLI from or pursuing any other remedies with respect to (i) asserting a bona fide defense to any action or proceeding commenced by Locafrance and Atlas, or either of them, (ii) enforcing the provisions of Section 9 hereof, (iii) enforcing its option to purchase the ISLI Trucks (as defined in Section 9 hereof) in accordance with the provisions of the New ISLI Lease (as defined in Section 9 hereof), or (iv) enforcing its right to an accounting in accordance with the provisions of Subsection 22.1 hereof. In furtherance thereof, ISLI consents and agrees to use its best efforts to assist Locafrance and Atlas, or either of them, to obtain possession of those items of the Equipment not already obtained by Locafrance or Atlas, such efforts to include, but not be limited to, the transmittal of a joint letter with Locafrance and/or Atlas substantially in the form annexed hereto as Schedule "J" to those persons presently in the possession of items of the Equipment, and to those persons on whose premises items of the Equipment to which Locafrance and Atlas are entitled are presently located but not yet in the possession of Locafrance or Atlas, confirming to such persons the right of Locafrance and/or Atlas to such items of the Equipment.

4.1 ISLI's undertaking not to commence any action or any proceeding in any jurisdiction or in any forum, and not to take or cause to be taken any action or any proceeding to seek recovery from Atlas is conditional upon the receipt by ISLI by June 28, 1974 (or as such date may be extended as provided in Section 25 hereof) of a similar undertaking from Atlas. Except as modified by this Subsection 4.1, ISLI's

undertaking as set forth in the first sentence of Section 4 relating to obtaining possession of the Equipment and to the Atlas Order shall be effective upon this Agreement becoming effective. 30a

4.2 ISLI consents and agrees that as between Locafrance and ISLI, Locafrance (i) has full right to possession of and title to the Equipment and (ii) has full right to sell, assign, transfer, re-lease or otherwise dispose of the Equipment and, (iii) in the event of a default under this Agreement by ISLI to recover immediate unhindered possession of the items of the Equipment which will be leased by Locafrance to ISLI pursuant to the lease to be entered into between Locafrance and ISLI as provided in Section 9 hereof and to sell, assign, transfer, release or otherwise dispose of such items of the Equipment.

4.3 As soon as may be practicable after Atlas indicates its consent to this Agreement, as limited and provided for in Section 25 hereof, Locafrance shall deliver to ISLI a letter to the effect that ISLI is entitled to receive from the persons, firms or corporations ~~to whom it had subleased the~~ WHO WERE USING Equipment under the Leases all rentals that were due and payable by such ~~sublessees~~ USERS up to and including March 11, 1974 OR SUCH EARLIER DATE THAT THE USER GAVE UP POSSESSION OF THE EQUIPMENT. Except with respect to those persons, firms and corporations who become sublessees of the ISLI Trucks (as defined in Section 9 hereof) as permitted in the New ISLI Lease (as defined in Section 9 hereof), ISLI covenants and agrees that for the one hundred twenty (120) days next following the date of this Agreement, it shall not use such letter, or take any action with respect to such ~~sublessees~~ USERS other than to render invoices or statements in the ordinary course of business, in order to enforce collection of such rentals. Upon the expiration of such period, ISLI shall be released from the foregoing restriction.

5. ISLI consents, agrees, acknowledges and confirms to Locafrance and Atlas that (i) Locafrance had full right, power, authority and title to convey to Atlas those

items of the Equipment, possession of which has been obtained by either Locafrance or Atlas and title to which has been conveyed by Locafrance to Atlas, a schedule of which is annexed hereto as Schedule "C" (the "Conveyed Atlas Equipment"), free and clear of any claim or lien by or created by ISLI, and (ii) other than due to acts of Locafrance, Locafrance has and can convey title to the remaining items of the Equipment, which consists of those items on Schedule "A" not included on Schedule "C" or Schedule "F" free and clear of claims, liens or encumbrances granted by, or caused by the actions of, ISLI wherever the remaining items of the Equipment are located and whoever may be in possession of them. 31a

5.1 ISLI represents and warrants to Locafrance that at the time Locafrance purchased the Equipment from ISLI, ISLI conveyed to Locafrance good and defensible title to the Equipment, free and clear of all claims, liens and encumbrances and that it had full power and authority to convey the Equipment to Locafrance. ISLI hereby indemnifies and holds Locafrance harmless from and against any and all claims, actions, causes of action, judgments, liabilities, loss, damage, costs or expenses of whatever kind or nature (including reasonable attorneys' fees) suffered by Locafrance as a result of the breach of the foregoing representation and warranty. The amount so suffered by Locafrance shall be added to and made part of the Indebtedness.

6. ISLI covenants and agrees that it will liquidate the Indebtedness to Locafrance as follows:

6.1 During the month next following the month in which this Agreement is executed, and during each of the next following eleven months, no payments in reduction of the Indebtedness shall be made.

6.2 During each of the thirteenth through twenty-fourth months next following the month following the month in which this Agreement is executed, by the payment of $5,000 to Locafrance in each of said months. 32a

6.3 During each of the twenty-fifth through forty-eighth months next following the month following the month in which this Agreement is executed, by the payment of $10,000 to Locafrance in each of said months.

6.4 Commencing with the forty-ninth month next following the month following the month in which this Agreement is executed by the payment of $15,000 to Locafrance in each of the next following months until the total amount of the Indebtedness has been paid in full.

6.5 All payments shall be made at the offices of Locafrance at the address set forth above by ~~bank cashiers or certified~~ check, or by bank to bank transfers, and shall be due at said offices, or Locafrance's bank, as the case may be, on the fifteenth day of each month in which a payment is to be made.

7. Annexed hereto as Schedule "D" is a schedule of claims made with insurance companies by either Locafrance or ISLI, for items of the Equipment which have been lost, stolen or destroyed or on account of any other risk in respect of the Equipment which has been insured. Said Schedule "D" includes the name of the claimant, the insurance company against which the claim has been filed and identifies the item of the Equipment on account of which the claim has been filed. The proceeds from such claims, and any claims that may hereafter be filed are hereby assigned to and shall be made payable to and shall be paid in full directly to Locafrance and shall be applied in reduction of the Indebtedness as follows:

7.1 Fifty percent (50%) thereof, but no more than $30,000, shall be applied in satisfaction of the earliest monthly payments to be made by ISLI during the period specified in Subsection 6.2 above in payment of the Indebtedness, and ISLI shall continue to be obligated for the monthly payments during such period as provided therein which have not been satisfied as provided in this Subsection 7.1.

7.2 The remaining fifty percent (50%) thereof, or the difference between $30,000 and the amount of the proceeds from such claims, as the case may be, shall be applied in reduction of the Indebtedness.

ISLI covenants and agrees to promptly give written notice to all insurance companies with which it has filed a claim that all proceeds of such claim have been assigned to and shall be payable to and paid in full to Locafrance at its offices set forth above, and, with respect to any claims that may hereafter be filed, to similarly advise the insurance company with which the claim is filed. ISLI further covenants and agrees to execute such documents as the insurance companies may require to enable payment as aforesaid. A copy of each such notice and document, as signed and delivered by ISLI, shall be sent by ISLI to Locafrance.

8. Except for the rental payments and the proceeds of sale, if any, received by Locafrance from ISLI from the leasing and sale to ISLI of the items of the Equipment which will be leased by Locafrance to ISLI pursuant to the lease to be entered into between Locafrance and ISLI as provided in Section 9 hereof, and except for the proceeds received and to be received from Atlas pursuant to the Atlas Order after deducting therefrom any amounts paid by Locafrance to Atlas as provided in Section 10 hereof, Locafrance shall apply any

net proceeds actually received by Locafrance from any sales, 34a assignments, transfers, re-leases, or other disposition of the Equipment (other than items of the Equipment being re-leased to ISLI) in reduction of the Indebtedness.

9. Locafrance consents and agrees that it shall enter into a new lease agreement with ISLI substantially in the form and substance as annexed hereto as Schedule "E" (the "New ISLI Lease") whereby it will lease to ISLI a minimum of thirty (30) of the fork lift trucks which are at the locations set forth on Schedule "F" annexed hereto (the "ISLI Trucks"). The number of trucks at each location may vary from the numbers of trucks set forth on Schedule "F", and no trucks may be available at some locations. Therefore, ISLI agrees to accept as the "ISLI Trucks" the number of trucks at the particular locations, as specified on Schedule "F" wherever located, that Atlas shall deliver to Locafrance as provided in Section 10 hereof, provided that there shall not be less than thirty (30) ISLI Trucks. Locafrance agrees to use its best efforts to have Atlas deliver more than thirty (30) trucks, but the delivery by Atlas as aforesaid shall satisfy Locafrance's legal obligation under this Agreement. The New ISLI Lease shall include, but not be limited to, the following terms and conditions:

9.1 The term shall be thirty-six months.

9.2 Rental payments shall be made monthly.

9.3 Rental for each Hyster fork lift truck shall be at the rate of $175.00 per month (except for those listed on Schedule "F" which have an asterisk [*] for which the rental shall be at the rate of $105.00 per month), and rental for each non-Hyster fork lift truck shall be at the rate of $105.00 per month.

9.4 At the expiration of the term of the 35a
New ISLI Lease, ISLI shall have the option to purchase all of Locafrance's right, title and interest in the ISLI Trucks for a purchase price of $1.00 per truck, and during the term of the New ISLI Lease, ISLI shall have the option to purchase all of Locafrance's right, title and interest in any of the ISLI Trucks for a purchase price equal to the outstanding rentals to the expiration of the New ISLI Lease attributable to the trucks being purchased, discounted to the then present day value at the rate of 10%, all as more particularly described in Schedule "E".

9.5 ISLI shall have the right to sublease the ISLI Trucks provided that (i) a sublease in form and substance as annexed hereto as Schedule "G" is executed by ISLI and the sublessee, (ii) the sublease is assigned to Locafrance by a document of assignment in form and substance as annexed hereto as Schedule "H" as collateral security for ISLI's performance under the New ISLI Lease and as collateral security for the performance by ISLI of its obligation's under this Agreement, (iii) the term of the sublease is not less than six (6) months, (iv) the aggregate rental payments under all the subleases shall be not less than the rental payments to be made by ISLI to Locafrance, with rental payments by sublessees payable monthly, (v) no sublessee will have an option to purchase or otherwise acquire title to any of the trucks or in any way acquire an interest in or lien upon any of the trucks other than as a lessee except for an option to purchase at fair market value as more particularly described on Schedule "G", (vi) the sublessees' rental payments shall be made payable to and remitted by the

(The next page following is -9-)

sublessee to Locafrance and Locafrance shall promptly remit to ISLI 36a
the difference between the aggregate amount received by Locafrance from sublessees and ISLI's rental obligation to Locafrance under the New ISLI Lease subject to the rights of Locafrance as set forth in Schedule "H", and (vii) all other requirements and conditions in connection with such right to sublease as set forth in Schedule "E" have been complied with by ISLI.

9.6 ISLI need not keep the ISLI Trucks at their present locations set forth on Schedule "F", but prior to the removal of any of the ISLI Trucks from its present location, ISLI must give Locafrance written notice of such removal, such notice to include the present location, type and serial number of each truck and the destination of each truck. Any cost, expense and risk involved in moving any of the ISLI Trucks from where they are presently located to where they will be used by ISLI or its sublessee shall, as between Locafrance and ISLI, be borne by ISLI and shall be at ISLI's risk.

9.7 Locafrance consents and agrees to use its best efforts to assist ISLI to obtain possession of the ISLI Trucks.

10. Atlas shall deliver to Locafrance, or at Locafrance's direction, the ISLI Trucks that are in its possession, and to convey to Locafrance good, clear, and unencumbered title to any of said trucks to which it has title upon receipt from Locafrance of the amount of consideration paid, if any, by Atlas to Locafrance for such trucks. Atlas does hereby remise, release and forever discharge Locafrance from any and all obligations to it, except as stated in this Section 10, with respect to the ISLI Trucks.

37a

11. ISLI represents and warrants that as of the date hereof, its net worth, determined in accordance with generally accepted accounting principles applied on a basis consistent with prior years, is not in excess of $90,000.00.

12. ISLI covenants and agrees that not later than November 30, 1974 it shall deliver to Locafrance a balance sheet as at a date between the date hereof of this Agreement and the date it is actually delivered, certified by ISLI's chief financial officer or, if prepared by ISLI's regularly employed independent certified public accountant, then certified by him, but in any event such balance sheet shall be prepared in accordance with generally accepted accounting principles applied on a basis consistent with prior years. In the event a balance sheet is not delivered as aforesaid, then Locafrance, at its own cost and expense, shall have the right during normal business hours to examine the books and records of ISLI.

12.1 ISLI covenants and agrees that not later than December 31 of each year during the term of this Lease it shall deliver to Locafrance a financial statement for the period ended the preceding August 31, including the results of operations for the period then ended such statements shall (i) be certified by ISLI's chief financial officer provided, however, that if during such period ISLI has prepared financial statements which shall be certified by an independent certified public accountant, the financial statement which ISLI covenants to deliver shall also be certified by an independent certified public accountant, and (ii) be prepared in accordance with generally accepted accounting principles applied on a basis

consistent with prior years. In the event a financial statement has not been certified by an independent certified public accountant, then Locafrance, at its own cost and expense, shall have the right during normal business hours to examine the books and records of ISLI to confirm such financial statements.

13. ISLI covenants and agrees that it shall not, in any manner, dispose of any assets it now has or shall hereafter acquire having (i) an aggregate value in excess of $15,000 in a single transaction or (ii) having an aggregate value in excess of $150,000 in any consecutive twelve month period, without the prior written consent of Locafrance. ISLI further covenants and agrees to give Locafrance written notice of all regular and special meetings of the Board of Directors of ISLI, or of any committee of the Board of Directors, not less than seven (7) days prior to the date of such meeting. Locafrance shall have the right to have a representative attend all of such meetings.

14. In the event (i) the balance sheet to be delivered pursuant to Section 12 hereof, but not Subsection 12.1 hereof discloses that ISLI has a net worth in excess of the represented amount by more than $200,000 (exclusive of any net asset value gained from the New ISLI Lease or any other lease entered into by ISLI as lessee), or (ii) ISLI has made any material misrepresentation in this Agreement, or (iii) ISLI breaches the provisions of Section 13 hereof, or any other material covenant contained in this Agreement, or (iv) ISLI defaults in making the payments required to be made hereunder and a default has not been cured within five (5) days of notice thereof from Locafrance to ISLI, or (v) ISLI defaults under the New ISLI Lease including, but not limited to, failure to comply with the provisions relating to subleases contained therein, or (vi) ISLI

in complying with the provisions of Subsection 9.5(ii) hereof executes and delivers a document of assignment containing a material misrepresentation or breaches any of the material covenants contained in any document of assignment which has been delivered, or (vii) ISLI fails to deliver a financial statement in accordance with Subsection 12.1 hereof then, and in any such events, Locafrance shall have (a) the right to declare ISLI in default of this Agreement and terminate it as between them, and to declare the total amount of the Indebtedness, as the same may have been reduced, immediately due and payable, (b) to declare ISLI in default of, and to recover possession of the ISLI Trucks, and to exercise such other rights and remedies granted to it in the New ISLI Lease occassioned by a default thereunder as it shall determine, and (c) to exercise such other rights and remedies, at law and in equity, it may have against ISLI, or any of the foregoing.

15. ISLI consents and agrees that unless and until it has the right to and does exercise its option to purchase the ISLI Trucks, granted to it in the New ISLI Lease, all right, title and interest in and to the ISLI Trucks is in Locafrance.

16. There is presently pending in the Common Pleas Court of Lucas County, Ohio an action entitled "Locafrance U.S. Corporation, Plaintiff, vs. WDHO-TV, Defendant", with a hearing presently scheduled for July 17, 1974, at 2:00 P.M. Locafrance agrees to adjourn the hearing, and to continue to adjourn the hearing, for an aggregate period of six (6) weeks from the date hereof. In the event an adjournment, or subsequent adjournments, cannot be obtained to such aggregate period, Locafrance shall withdraw such case provided that such withdrawal can be without prejudice to a re-commencement thereof. The period of time provided for herein is to enable various parties who are interested in the property which is the subject of the action to negotiate with Locafrance and

for Locafrance to enter into an agreement for the sale, lease 40a
or other disposition of such property on terms satisfactory to it. Upon the execution of such an agreement, Locafrance shall discontinue such action, with prejudice. If the action cannot be adjourned or withdrawn as provided above, or if at the expiration of such period Locafrance has not executed an agreement with respect to such property, it shall be free to prosecute such action.

17. The parties hereto agree to mutually cooperate for the purposes of carrying out the provisions of this Agreement and for the purposes of repossessing the Equipment, wherever the same may be located and whoever may be in possession, so that it may be disposed of as provided for in this Agreement.

18. Any notice given under this Agreement shall be in writing and delivered, personally or by postage prepaid first class certified mail, return receipt requested, to the party for whom it is intended at the address set forth above or to such other address as any party may hereafter designate to the others by notice similarly served on all persons so named, and shall be deemed given when delivered personally or two (2) days after the same is mailed if mailed as aforesaid. Transmittal of rental payments shall not be deemed to be the giving of notice.

19. Concurrently with the execution of this Agreement, Locafrance and ISLI are exchanging releases in the forms annexed hereto as Schedules "I" and "I-1".

20. This Agreement shall inure to the benefit of, and be binding upon, the parties hereto and their respective heirs, personal representatives, successors and assigns.

21. In order to induce Locafrance to enter into the Leases, Overmyer Distribution Services, Inc. ("ODS"), The Overmyer Company, Inc. ("OCI") and D.H. Overmyer Co., Inc. (Ohio) ("DHO") each delivered to Locafrance a written guarantee of

the prompt and unconditional payment of any and every 41a
obligation or liability of ISLI to Locafrance. ISLI covenants and agrees that not later than the thirtieth day next following the day on which this Agreement becomes effective as provided in Section 24 hereof, it shall deliver to Locafrance the written acknowledgment of ODS (by its shareholders), OCI and DHO that the terms and conditions of the guarantee delivered by the acknowledging company has not been in any way impaired, affected or modified by this Agreement, and that the same is in full force and effect in accordance with its terms. The failure or refusal of any one or all of ODS, OCI or DHO to execute and deliver such an acknowledgment shall not be construed to mean that such guarantee is not in full force and effect in accordance with its terms.

22. If at the end of the term of the New ISLI Lease, ISLI is not then and has not been in default under the New ISLI Lease and this Agreement, there shall be deducted from the then outstanding amount of the Indebtedness the amount of $120,000 provided, however, that if the then outstanding amount of the Indebtedness is less than $120,000, the then outstanding indebtedness shall be reduced only to the extent that it is then outstanding. *In no event shall Locafrance be obligated to pay to, or issue credits to ISLI for the extent to which the then outstanding amount of the Indebtedness exceeds $120,000.

22.1 Locafrance consents and agrees to render an account to ISLI, on a quarterly basis commencing with the quarter ending August 31, 1974 as to all increases or decreases to the Indebtedness during the quarter. The accounting need not be given if there has been no change in the Indebtedness other than payments by ISLI. The accounting shall be delivered not later than the fifteenth day following the expiration of a quarter. ISLI's s le remedy in the event

* SEE PAGE -14a- FOR INSERT

* If, During the term of the New ISLI Lease the Indebtedness is reduced to $120,000, then any proceeds from the sale or other disposition of the Equipment (excluding the ISLI Trucks and other fork lift trucks) received by Locafrance after the date hereof (including proceeds from insurance claims but excluding interest from future financing or leasing transactions by Locafrance involving the Equipment and rental payments under the New ISLI Lease) will be applied against rental payments that may become due under the New ISLI Lease in reverse order of maturity, and the term of the New ISLI Lease shall be shortened accordingly.

(page 15 is the next page)

Locafrance fails to deliver an accounting is to bring an action to compel delivery thereof. The obligations of ISLI under this Agreement shall not be affected by the failure of Locafrance to so deliver or the commencement of any action by ISLI.

23. This Agreement shall be construed and enforced in accordance with the laws of the State of New York.

24. This Agreement may be signed in any number of counterparts, each of which shall be deemed to be an original and which together shall constitute one and the same instrument.

25. This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and may not be modified, altered or amended, and no part hereof may be waived, unless the same be in writing signed by the parties hereto. This Agreement and the releases exchanged by Locafrance and ISLI, are contingent upon the agreement of Atlas to be bound by, and comply with the provisions of, Section 3 and Section 10 hereof, which Agreement shall include its consent and agreement to deliver not less than thirty (30) of the trucks set forth on Schedule "F". The agreement of Atlas shall be evidenced by the signature of Atlas in the space provided immediately below the signatures of Locafrance and ISLI. In the event Atlas has not so agreed on or before June 28, 1974, or such later date as Locafrance and ISLI may agree upon in writing, this Agreement, and the releases exchanged by Locafrance and ISLI, shall be null, void and of no force and effect and neither party shall have any obligation to the other with respect to the subject matter hereof.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date first above written.

Locafrance U.S. Corporation

by _____

Intermodal Systems Leasing, Inc.

by _____ President

By its signature below, in consideration of the benefits which accrue to it under this Agreement, Atlas Lift Truck Rentals & Sales, Inc. agrees to be bound by, and comply with, the provisions of Section 3 and Section 10 of the foregoing Agreement and to deliver to Locafrance, in accordance with the provisions of said Section 10, the trucks on Schedule "F" annexed to the foregoing Agreement which have been initialled by Atlas and Locafrance or set forth on a separate schedule and signed by Atlas and Locafrance

Atlas Lift Truck Rentals & Sales, Inc.

Date: _____

by _____

SCHEDULE "A"

A schedule of all of the Equipment leased by Locafrance to ISLI and covered by the Leases.

SCHEDULE "B"

A schedule of Atlas Equipment as annexed to the Atlas Order.

SCHEDULE "C"

A schedule of the Conveyed Atlas Equipment.

SCHEDULE "D"

A schedule of Insurance Claims:

Claimant	Insurance Company	Description of item of Equipment

SCHEDULE "E"

New ISLI Lease - Attached.

SCHEDULE "F"

A schedule of the ISLI Trucks

SCHEDULE "G"

Form of Sublease - Attached.

SCHEDULE "H"

Form of Assignment - Attached.

SCHEDULE "I"

Form of Release from Locafrance to ISLI - attached

SCHEDULE "I-1"

Form of Release from ISLI to Locafrance - attached

SCHEDULE "J"

Form of Letter

SCHEDULE "A"

SCHEDULE "A" TO THE LEASE AGREEMENT NUMBER 057/82/000 071/C

BETWEEN LOCAFRANCE U.S. CORPORATION, LESSOR

AND INTERMODAL SYSTEMS LEASING, INC., LESSEE

(10 Pages)

LOCATION OF EQUIPMENT	EQUIPMENT BY ITEM & VALUE						
	BATTERY CHARGERS $1,000.-	BASILOIDS $ 250.-	CLAMPS $1,000.	SCALES $100.	RACKING SQ.FT. $1./s.f.	PALLET TRUCKS $50.-	FORK LIFT RATING. $15.-
Albany	1		4			4	31
Atlanta					12,000		48
Baltimore			1				
Birmingham							
Boston						2	17
*Carlstadt				1	2,752		36
Charlotte		1					
Chattanooga		2					12
Cincinnati							
Columbus			7	1	1,400		138
Detroit							
Hartford							
Jackronville							
Miami			1			1	27
Nashville						1	15
**Orlando				1			20
Pittsburgh							
Philadelphia			1				12
Providence						2	2
Richmond				1			42
Syracuse							9
Tampa				1			23
Toledo	3		1			1	
Wilmington							
Woodbridge						2	99
Chicago						8	
Formodal							
Dallas							24
Denver							8
El Paso						1	4
Houston							28
Indianapolis							
Las Vegas							
Los Angeles		1				1	
Memphis							
Milwaukee							
Minn/St. Paul							
New Orleans					21,000		
+Peoria						1	
Oklahoma City	4	1			300		
Phoenix					11,000	2	14
Portland							
Reno							5
St. Louis							14
Salt Lake City							
San Antonio							
San Diego							
San Francisco							
Seattle							1
Serviconter							16
Totals:	8	5	15	5	48,452	26	645
Current Value:	$8,000	$750	$15,000	$500	$48,452	$1,300	$9,675

Approximate Original Cost: $1,290,147.56

Current Value: $ 83,477.00

*Carlstadt equipment transferred to Woodbridge after inventory list submitted to ISLI
**Orlando office closing - equipment being transferred to other branches
+Peoria equipment stored in Chicago

LOCATION OF EQUIPMENT	EQUIPMENT BY ITEM & VALUE									
	ADDING MACHINES		CALCULATORS	TYPEWRITERS		COPIERS	DESKS	CHAIRS	CABINETS	
	MANUAL	ELECTRIC		MANUAL	ELECTRIC				FILE/VIS	
Cost New:	$200	$300	$600	$200	$600	$450	$150	$ 50	$	$
Current Value:	0	100	350	100	300	100	50	10	25	
Albany										
Atlanta		14	8		18		9	17	7	
Baltimore							46	75	40	
Birmingham									5	
Boston									3	
Carlstadt		1	1		2		5		8	
Charlotte							11	13	14	1
Chattanooga										
Cincinnati							4	8	4	
Columbus										
Detroit										
Hartford		2							1	
Jacksonville							4	9	3	
Miami		6	1	2	8		26	23	16	
Nashville		1			2		3	8	2	
Orlando							3	6	6	
Pittsburgh										
Philadelphia		4			2		4	5	5	
Providence							3	3	4	
Richmond		1	1			1				
Syracuse		1			3	1	5	14	7	
Tampa										
Toledo					4		10	9	9	
Wilmington										
Woodbridge		1			6		1	8	2	
Chicago		2					5	9	6	
Formodal										
Dallas		4	1				21	58	25	
Denver							8	21	12	
El Paso										
Houston		6			4		3	2	2	
Indianapolis							8	12		1
Las Vegas		1					4	2	2	
Los Angeles		1			1				3	
Memphis		2			2		9	16	6	
Milwaukee				1	1		8	6	1	5
Minn (St.Paul)			1						1	
New Orleans		5				1	1	6	6	
Peoria		1				2	14	17	13	
Oklahoma City	1	13	5		1	1	3	8	3	
Phoenix		1			16		19	15	16	
Portland					1		4	5	6	
Reno								1	7	
St. Louis		3					3	4	3	
Salt Lake City							8	9	4	
San Antonio										
San Diego										
San Francisco		3			1					
Seattle	1									
Servicenter					2		5	3	7	
							5	5	4	
Totals:	2	73	18	3	76	6	263	397	263	1
Current Value:	$200	$11,680	$6,300	$390	$22,800	$600	$13,150	$3,970	$6,525	$

Approximate Original Cost: $160,230.00

Current Value: 69,745.00

*Carlstadt equipment transferred to Woodbridge after inventory list submitted to ISLI

**Orlando office closing - equipment being transferred to other branches

[redacted] equipment stored in Chicago

EFFECTIVE _____ FOR _____.

SCHEDULE "A"

LOCATION	ISLI LEASE#	EQUIPMENT	SERIAL NUMBER	ORIGINAL COST
ATLANTA	201052071	Westinghouse Cassette Recorder	70901	$ 59.
ATLANTA	201010173	SCM Calculator Mod. 212	24255247	208.
ATLANTA	201021473	IBM Executive Typewriter	2043904	200.
BIRMINGHAM	202052071	Westinghouse Cassette Recorder	41928	59.
BOSTON	103120171	Fence	-----	370.
BOSTON	103021473	Olympia Electric Calculator CD-300	845272	205.
CHARLOTTE	203052071	Westinghouse Cassette Recorder	32521	59.
CHARLOTTE	203110971	(30) Fire Extinguishers	-----	522.
CHARLOTTE	203030372	(20) Racks (36W x 30D x 15L)		240.
CHARLOTTE	203042872	(4) Dock Bumpers (#1036)	-----	249.
CHARLOTTE	203110372	(20) Racks Steel (12,000lbs)		240.
CHARLOTTE	203111373	Dock Board Rail (7 X 8)	-----	610.
CHARLOTTE	203031473	Furniture -- (3 Chairs 1 Loveseat Sofa, 1 Credenza 1 Exec. Desk, 1 Lamp Table 1 Lamp	-----	1340.
CHICAGO	401[illegible]472	(2) Time Clocks	9581-9582LD	350.
CHICAGO	401081572	Walking Truck Elec.	301 97-4	2766.
CHICAGO	401101972	Forced Air Heater	-----	134.
CHICAGO	401051072	(250) Center Post Tier Racks		4000.
CHICAGO	401111772	Scrubber M520LP Rider	5200449	5585.
CHICAGO	401021473	Fire Extinguishers (24) #10-ABC (4) 2½ [illegible]C	------	897
CHICAGO	401021573	Air Compressor - 1½ [illegible] Mobile Twin Cylinder	-----	179
CHICAGO	401031473	(2) Dock Plates (72x30) (2) RR Dock Boards (70x30) RR Boards	-----	1199
CHICAGO	401031573	(2) MLM RR Dockboards (84 x 30)	----	470
CHICAGO	401031673	(2) MLM Dock Boards (72 x 30) (2) MLM RR Boards	----	1292

LOCATION	ISLI LEASE#	EQUIPMENT	SERIAL NUMBER	ORIGI COST
CINCINNATI	10612307?2A	Basiloid	864-1	$ 7
CINCINNATI	301100172	Time Recorder	16514	12
COLUMBUS	303040572	(12) 6L Fire Extinguishers Ansul/Sentry	-----	
COLUMBUS	303030272	Dock Plate - Econo Board	E-4848	36
COLUMBUS	303062372	Steuben Steel Shelving 1806-1806A Units	-----	285
COLUMBUS	303062472	Order Picker M/Tel-EP-HR	24297-1	470
DALLAS	501011773	Olympia Elec. Calculator CD-100	88319	12
EAST HARTFORD	105030472	(2) Loading Dock Plates	-----	39
EAST HARTFORD	105102372	IBM Standard Type. Model C	1904585	30
EL PASO	705031672	Carpet Ram	-----	17
EL PASO	603031673	Olympia Elec. Calculator CD300	13826	20
INDIANAPOLIS	402081371	(26) Fire Extinguishers	-----	544
JACKSONVILLE	205052571	Westinghouse Cass. Recorder	41332	59
LA MIRADA	706101171	Scale	STK3083	225
LA MIRADA	704021572	(2) Desks/Walnut Formica Top	--------	25
MEMPHIS	504072872	(3) Dock Plates HTRS 6036	-----	441
MEMPHIS	504100172	(2) Dock Plates HTRS 6036	-----	294
MIAMI	206030872	(67) Fire Extinguihers	-------	1172
MIAMI	206050972	(3) File Cabinets Letter Size (4) Drawer - Tan	------	234
MIAMI	206010173	(5) Fire Extinguisher	244044R92	
		(6) Flair Kits	--------	148
MILWAUKEE	404112072	Time Clock	1230/794980	187
MINNEAPOLIS	405041471	(16) Fire Extinguishers 2½ gal.	-----	273
MINNEAPOLIS	405030672	Pallet Truck-Stokvis Mod. 27-48	125671	264
MINNEAPOLIS	405071772	Unicom Calculator	M800/107874	149
MINNEAPOLIS	405090672	Hand Pallet Truck	153552	264
MINNEAPOLIS	405010173	Olivetti Editor 13' Type.	13-1347402	370
MINNEAPOLIS	405020173	(4) Cole Side Arm hairs ST-10	-------	152
NEW CASTLE	113051072	Olivetti Mult. Cal. Model 24	1M/120780	375

LOCATION	ISLI LEASE#	EQUIPMENT	SERIAL NUMBER	ORIGINAL COST
NEW ORLEANS	505052871	Westinghouse Cass. Recorder	29196	$ 59.
NEW ORLEANS	505060172	Pallet Truck Mdl.S27-48	131436	264.
NEW ORLEANS	505060272	Pallet Truck MDL.S27-48	131427	264.
NEW ORLEANS	505060372	Pallet Truck MDL.S27-48	131444	264.
NEW ORLEANS	505060472	Pallet Truck MDL.S27-48	131491	264.
NEW ORLEANS	505060572	Pallet Truck MDL.S27-48	131449	264.
NEW ORLEANS	505060672	Pallet Truck MDL.S27-48	131489	264.
NEW ORLEANS	505060772	Pallet Truck MDL.S27-48	131482	264.
NEW ORLEANS	505060872	Pallet Truck MDL.S27-48	131483	264.
NEW ORLEANS	505060972	Pallet Truck MDL.S27-48	131523	264.
NEW ORLEANS	505061072	Pallet Truck MDL.S27-48	131529	264.
NEW ORLEANS	505032372	Magliners (3Plates) (3) Dockboards	-----	882.
NEW ORLEANS	505082872	(3) Bulkheads (4x8) for trailers	-----	469.
NEW YORK	900050471	Bookcase	-----	147.
NEW YORK	401052071	Westinghouse Cass. Recorder(2)	41386-32665	119.
NEW YORK	900060271	Westinghouse Cass. Recorder	40250	59.
NEW YORK	974011072	File Cab. (4) Dr. Legal -Blk.	-------	76.
NEW YORK	900010972	File Cab. (2) Dr. Legal-Blk.	-------	50.
NEW YORK	971030272	File Cab. with Safe (4) Drawer Onyx Green	SAF-4CL	141.
NEW YORK	910033172	Unicom Calculator M/1212	74097	235.
NEW YORK	975041072	File Cab. (4)Dr. legal-Gray	------	91.
NEW YORK	907040172	Olympia Calculator CD300	5327	262.
NEW YORK	907040272	Olympia Calculator CD300	5328	262.
NEW YORK	907040372	Olympia Calculator CD300	5329	262.
NEW YORK	907040472	Olympia Calculator CD300	5330	262.
NEW YORK	908052372	File Cab. 2DR. - Legal Blk.	-----	60.
NEW YORK	970062272	Westinghouse Cass. Recorder TMC-2025A	42956	59.
NEW YORK	910062072	Pitney Bowes Folder/inserter	37736 23624	2295.
NEW YORK	978071772	Olympia Calculator CD300	84-13137	262.
NEW YORK	972080472	Burroughs Calculator M/3350	C13098J	375.
NEW YORK	910072772	Olympia Calculator CD100	39905	158.
NEW YORK	973082472	Olympia Calculator CD100	639968	158.
NEW YORK	993082872	Olympia Calculator CD30(	84-13214	262
NEW YORK	910072672	File Cab. 4DR. Legal	-----	91
NEW YORK	974091672	Bowmar Port. Calculator	49647	99
NEW YORK	974091872	Bowmar Port. Calculator	43783	99
NEW YORK	974091972	Bowmar Port. Calculator	69135	99
NEW YORK	974092072	Bowmar Port. Calculator	53206	99
NEW YORK	978092572	Secretary Desk (54x24) Metal/Wood Finish (19 x 14)Return	-----	149

LOCATION	ISLI LEASE#	EQUIPMENT	SERIAL NUMBER	ORIGINAL COST
NEW YORK (Cont'd)	977100972	Secre. Chair (Black)	-----	$ 50.
NEW YORK	976101172	Shredder-Destroyit 2 Bin with Cabinet	-----	100.
NEW YORK	980092072	Sec. Chair - Orange	-----	50.
NEW YORK	920062672	Olympia Port. CalculatorCD100	535219	158.
NEW YORK	974110772	Cannon Calculator Port. with tape.	395605	169.
NEW YORK	971112572	Bowmar Port. Calculator	58281	99.
NEW YORK	990112072	Check Signer M/16020	1015	500.
NEW YORK	974121172	Olympia Port. Calculator CD100	84-69523	158.
NEW YORK	908112272	Olympia Port. Calculator CD100	1067431	158.
NEW YORK	908112372	Olympia Port. Calculator CD100	1067436	158.
NEW YORK	974091572	Walnut Trays (22)	-----	119.
NEW YORK	980010173	Unicom Calculator 1010P	133933	265.
NEW YORK	980010273	Unicom Calculator 1010P	133751	265.
NEW YORK	980010372	Unicom Calculator 1010P	134117	265.
NEW YORK	998010573	IBM Typewriter Mod. C 17"car.	17-1527636	384.
NEW YORK	974010773	IBM Typewriter Mod. C 17"car.	17-1619379	405.
NEW YORK	991010273	File Cab. 4Dr. Legal-Gray	-----	91.
NEW YORK	998103172	Data Cabinet (5 sections)	-----	391.
NEW YORK	992121372	Separater M1806	19043	2295.
NEW YORK	977103172	Mail Scales	4351-27564-1221	3220.
NEW YORK	973010273	Furniture: (2) Blk/Crome Chairs (1) Glass/Chrome Table	-----	239.
NEW YORK	991010173	Data Cabinet (2 Sec. gray)	-----	183.
NEW YORK	994020873	IBM Selectric Typewriter	4088152	375.
NEW YORK	976011073	Steelmaster Bookcase BK-1Gray	-----	34.
NEW YORK	974022573	Bowmar Port. Calculator	109851	95.
NEW YORK	974121272	Chippendale End Table	-----	105.
NEW YORK	901031773	Panasonic Port. Cass. Recorder	202032	75.
NEW YORK	901031573	Bowmar Port. Calculator	149765	95.
NEW YORK	901031473	Bowmar Port. Calculator	142941	95.
NEW YORK	901031673	Bowmar Port. Calculator	142929	95.
NEW YORK	972010973	Steelmaster Cab. 4DR-Legal-Gray	-----	91.
NEW YORK	974022773	Olympia Port. Calculator CD100	90717	126.
NEW YORK	974022473	Exec. Swivel Chair Blk-Chrome	-----	145.
NEW YORK	901021273	Exec. Swivel Chair Blk-Chrome	-----	145.
NEW YORK	992011173	Exec. Swivel Chair Blk-Chrome	-----	145.
NEW YORK	901031873	Panasonic Cass. Recorder	204100	75.
NEW YORK	976021473	Cole Legal (4)DR. Blk. Cabinets	-----	170.
NEW YORK	978022873	Cole Legal (2)DR. Blk. Cabinet	-----	68.
NEW YORK	996022873	(2) Cole Legal (4)DR Cabinet (1) Cole Legal (2) DR Cabinet (Gray)		235.
NEW YORK	977040373	Walnut End Table (30x20x20)	-----	53.
NEW YORK	980123172	Credenza Bookcase Unit	-----	138.
NEW YORK	992010473	(2) EDP Storage Cabinets	-----	628.

LOCATION	ISLT LEASE#	EQUIPMENT	SERIAL NUMBER	ORIGINAL COST
NEW YORK (Cont'd)	974011873	Steelmaster Legal (4) Dr. Black Cabinet	-----	$ 91.2
NEW YORK	974010673	Type. Chair Red/Black	-----	55.0
PHILADELPHIA	114101271	(1) Dock Plate	-----	380.0
PHILADELPHIA	114042072	Dock Boards(2) HAPP 6030	-----	218.5
PHILADELPHIA	909092872	Olympia Port. Calculator CD100	68008	158.0
PHILADLEPHIA	108011073	(20) Fire Extinguishers TCP-6	-----	335.0
PHOENIX	605102971	File Cabinet	-----	291.2
PHOENIX	704022372	Basiloid Attachment.	-----	727.3
PHOENIX	605021372	Ramp	-----	457.0
PHOENIX	605070772	Ramp	-----	476.0
PHOENIX	605010173	Time Clock Rack TR2W	54452	149.5
PORTLAND	7050207722A	(8) Dry Chemical Extinguishers #6MA-6 (ABC)	-----	148.0
RICHMOND	109091972	Basiloid - Lift Appl.	MF25/128	188.3
RICHMOND	109092072	Basiloid - Lift Appl.	MF25/127	188.3
RICHMOND	109091172	Time Recorder	E34295	250.0
ST. LOUIS	409073172	Remington Calculator	75310/D54237	265.0
ST. LOUIS (SVRT)	410052571	Westinghouse Cass. Recorder	73719	59.5
SALT LAKE CITY	606030672	Union Steel Barrelifter M/BL-2	-----	139.0
SALT LAKE CITY	70502207721A	(12) Dry Chemical Extinguishers #6MA-6 (ABC)	-----	222.0
SAN FRANCISCO	712061471	Office Furniture: Desks, Chairs, Book cases	-----	460.0
TAMPA	208021172	Rug Pole	-----	180.0
TAYLOR	304010173	Dock Plates (used) (2) Magnesium	84-48-8	75.0
TOLEDO	307072572	Dock Plates MLM SA10	-----	340.0
TOLEDO	307110272	Battery for Forklift	FE-40	2700.0
TOLEDO	307022873	(2) GE Roof Air Conditioners	TC-120A3C	8390.0
WKRC-TV	024022673	(1) TA-19 Video Processing Amplifier, Burst Regenerator, Automatic Video Gain Control	-----	5295.0

LOCATION	ISLI LEASE#	EQUIPMENT	SERIAL NUMBER	ORIGINAL COST
WHDO-TV	800040270	(5) Exec. Desks (24x40)		
		(2) Sec. Desks	-----	$ 690.
WDHO-TV	024022272	IBM Model C Typewriter	15-77606	315.
WDHO-TV	024083072	Bell & Howell TV Camera	98133	922.
WDHO-TV	024083172	Bell & Howell TV Camera	98561	922.
WDHO-TV	024091572	TV Equip.(Scoops & Fresnels)	-----	1479.
WDHO-TV	024090172	TV Projector & Acces.	-----	1104.
WDHO-TV	024082972	TV Film Process.	-----	5864.
WDHO-TV	024101272	IBM Stand. Model C Typewriter	2042756	225.
WDHO-TV	024101372	IBM Stand. Model C Typewriter	1213370	325.
WDHO-TV	024101472	IBM Stand. Model C Typewriter	1716369	345.
WDHO-TV	024112072	TV Antenna Acces.	-----	337.
WDHO-TV	024102472	Hot Water Tank	-----	263.
WDHO-TV	024122672	(8) Trimm Filter (4) Mirrors.	-----	2842.
WOODBRIDGE	106070671	(56) Water &(4) ABC Fire Extg.	-----	1452.
WOODBRIDGE	118060371	Westinghouse Cass. Recorder	38610	59.
WOODBRIDGE	106012307111A	Basiloid	863-1	738.

EFFECTIVE _____ FOR _____.

SCHEDULE "C" HYSTERS

LOCATION	ISLI LEASE#	MODEL#	SERIAL#	ORIGINAL COST
BALTIMORE	102022470	S50C	C2D-8586P	$ 10,374.80
BALTIMORE	102022170	S50C	C2D-10802P	10,479.60
BOSTON	106061670	S50C	C2D-9677P	10,270.80
BOSTON	103090770	S50C	C2D-10341P	10,270.80
BOSTON	103090870	S50C	C2D-10342P	10,270.80
CHARLOTTE	102102070	S50C	C2D-10801P	10,479.60
~~CHATTANOOGA~~ Cincinnati	204063070	S50C	C2D-9674P	10,270.80
CHICAGO	401103069	S50C	C2D-7818N	10,658.00
CHICAGO	401091170	S50C	C2L-10338P	10,270.80
CHICAGO	401091070	S50C	C2D-10339P	10,270.80
CHICAGO	401101370	S50C	C2D-10800P	10,450.80
CINCINNATI	115080470	S50C	C2D-10184P	10,273.50
CINCINNATI	401101470	S50C	C2D-10799P	10,450.80
COLUMBUS	303030470	S50C	C2D-8587P	10,374.80
COLUMBUS	116080970	S50C	C2D-10291P	9,573.30
COLUMBUS	103090670	S50C	C2D-10340P	10,270.80
DETROIT	303030370	S50C	C2D-8588P	10,374.80
HOUSTON	115080370	S50C	C2D-10183P	10,273.50
HOUSTON	115081170	S30C	C2D-10334P	9,042.30
LAS VEGAS	604012170	S50C	C2D-8585P	10,374.80
LOS ANGELES	704110670	S50C	C2D-9520P	10,374.80
MEMPHIS	504092870	S40C	C2D-7[illegible]	8,020.90
MEMPHIS	115080770	S50C	C2d-10289P	9,573.30
MEMPHIS	115081070	S50C	C2D-10287P	9,573.30
MEMPHIS	115081470	S30C	C2D-10336P	9,042.30
MILWAUKEE	404012170	S50C	C2D-8582P	10,374.80
~~NASHVILLE~~ Chicago	504092969	S40C	C2D-5146M	8,196.00
NASHVILLE	115080170	S50C	C2D-10181P	10,273.50

SCHEDULE "C" HYSTERS

LOCATION	ISLI LEASD#	MODEL#	SERIAL#	ORIGINAL COST
NEW ORLEANS	706003469	S125AP	A24D-1714N	$ 19,010.60
NEW ORLEANS	505061970	S50C	C2D-9673P	10,374.80
NEW ORLEANS	505061670	S50C	C2D-9521P	10,270.80
PENNSAUKEN	108022470	S50C	C2D-8584P	10,374.80
PENNSAUKEN	108062970	S50C	C2D-9676P	10,270.80
RICHMOND	203063070	S100B	A17D-1693N	17,460.00
ST. LOUIS	409005269	F30A	A10D-6433M	8,000.00
SAN ANTONIO	507012270	S50C	C2D-8583P	10,374.80
SAN LEANDRO	708051870	S50C	C2D-8589P	10,374.80
TAMPA	110061970	S50C	C2D-9675P	10,270.80
WILMINGTON	113080670	S50C	C2D-10180P	10,324.80
WOODBRIDGE	106012170	S50C	C2D-8580P	10,374.80
WOODBRIDGE	106012270	S50C	C2D-8581P	10,374.80
WOODBRIDGE	115080270	S50C	C2D-10182P	10,273.50
WOODBRIDGE	115080570	S50C	C2D-10286P	9,573.30
WOODBRIDGE	115080670	S50C	C2D-10288P	9,573.30
WOODBRIDGE	115080870	S50C	C2D-10290P	9,573.30
WOODBRIDGE	115081270	S50C	C2D-10335P	9,042.30
WOODBRIDGE	115081370	S50C	C2D-10337P	9,042.30

Schedule "A"

POLICIES

CITY	STATE	COUNTY	SERIAL NO.
Birmingham	Ala.	Jefferson	42250860
Phoenix	Ariz.	Maricopa	4464621161
Los Angeles	Cal.	Los Angeles	502S660307
			502S660370
			502S660739
San Leandro	Cal.	Alameda	502S670310
			502S660330
Hayward	Cal.	Alameda	502S670312
			502S660616
			502S660781
San Diego	Cal.	San Diego	502S660607
Denver	Col.	Denver	502S660306
			502S660317
			502S670069
			502S660717
Hartford	Conn.	Hartford	502S660609
			502S660270
			502S660300
Miami	Fla.	Dade	502S660318
			502S660602
			502S670433
			502S660790
			502S670055
			45-1765
			127-368
			173-630
			869-563
			1239-1160
			46-128
			AT-400
Orlando	Fla.	Orange	502S660426
			502S660376
			531553106
Tampa	Fla.	Hillsborough	502S660269
Jacksonville	Fla.	Duval	502S660273
			422S660314
			422S660319
			502S660368
			392S660379
Atlanta	Geo.	Fulton	502S670022
			502S660301
			502S660316
			502S660319
			(Plates Missing)
			462S661139
			42250568
			462S661140
			5048167
			422S0367
			46052695
			462S661141
			462S661142
Peoria	Ill.	Peoria	462S661138
Chicago	Ill.	Cook	392S660365
			502S660314
			502S670058

INTERNATIONAL SYSTEMS LEASING

Schedule "A"

FORKLIFTS

CITY	STATE	COUNTY	SERIAL NO.
Indianapolis	Ind.	Marion	502S660365
			392S660377
			502S660739
New Orleans	LA.	Orleans	502S660797
			502S660798
			502S660799
			502S660613
Baltimore	Md.	Baltimore City	502S670306
			502S660614
Boston	Mass.	Suffolk	502S660272
			502S660610
			502S660736
			502S670051
			502S670066
			502S660782
			502S660618
			502S660619
Minneapolis	Minn.	Hennepin	392S660376
St. Louis	Mo.	St. Louis	502S660310
			392S660367
			502S660371
			502S660372
			502S660373
			502S660379
			502S670064
			502S670067
			502S660313
Kansas City	Mo.	Clay & Jackson	502S660304
			502S670307
			502S660615
			392S670069
Las Vegas	Nev.	Clark	502S660788
Reno	Nev.	Washoe	502S660364
Pennsauken	N.J.	Camden	502S660611
			502S660791
			502S660303
Woodbridge	N.J.	Middlesex	502S660236
			502S660271
			502S670052
			502S670053
			502S670054
			502S670061
			502S670308
Syracuse	N.Y.	Onondaga	502S660606
			502S660617
Albany	N.Y.	Albany	502S660311
			502S660369
			502S660374
			502S660375
			502S670311
Charlotte	N.C.	Mecklenburg	502S660604
Toledo	Ohio	Lucas	502S660735
			502S660737
			502S660738
			502S660740
			502S670059
			502S660716
			392S670068
			462S670228

INTERMODAL SYSTEMS LEASING

Schedule "A"

FORKLIFTS

CITY	STATE	COUNTY	SERIAL NO.
Cincinnati	Ohio	Hamilton	392S660366
			502S660377
			502S670056
Columbus .	Ohio	Franklin	502S660378
			502S670060
			502S660608
			392S660378
			392S670096
			590S670024
			AD047741
			500510019
			CE-55EEA-132
			AH099805
			T3547436
			54257
			808814
			C30392-9846
			FGD020
			26101527
			CA0102918
			C40B497688
			31728
Oklahoma City	Okl.	Oklahoma	CEC2204C
			CEC145-211
			CF25 254RR11
			CE100 EK181
			CE13LP1101131
			LPG20343
			CE121RT77
			P161101
			1639-7000
			C25B5444623L2
			2L5 15000
			51701
			C20B526462362
			C20B524462362
			C2D6744N
			A1C1E5544L
			A10D3L60P
			CEC3655711263
			AJ128157
			CE199K099
			AH112503
Pittsburgh	Pa.	Allegheny	502S660312
			502S660605
			392S670097
Philadelphia	Pa.	Philadelphia	502S660620
Nashville	Tenn.	Davidson	502S660367
Chattanooga	Tenn.	Hamilton	42250570
El Paso	Tex.	El Paso	500590019
Houston	Tex.	Harris	502S660362
			502S660795
			462S660975
			502S660796
			411S660048
			502S660792
			502S660793
			502S660794
Dallas	Tex.	Dallas	502S660305
			502S660308
			502S670063
Richmond	Va.	Henrico	502S660309
			502S670057
			502S660312

INVENTORY LIST OF FORK-LIFT TRUCKS

	Serial Number	Purch. Date	Condition	In Use	Liquidation Value
acksonville, Fla.	502S 650044	3-65	Fair	Yes	$ 1,000
ampa, Fla.	502S 650008	3-65	Fair	Yes	1,000
iami, Fla.	502S 650200	4-65	Good	Yes	1,600
tlanta, Ga.	502S 650045	3-65	Good	Yes	1,600
tlanta, Ga.	502S 650335	9-65	Fair	Yes	1,000
ichmond, Va.	502S 650294	7-65	Fair	Yes	1,000
ichmond, Va.	502S 650396	10-65	Fair	Yes	1,000
ichmond, Va.	502S 650428	9-65	Fair	Yes	1,000
Tampa, Fla.	502S 660036	5-66	Good	Yes	2,400
Tampa, Fla.	502S 660037	5-66	Good	Yes	2,400
Albany, N. Y.	502S 650247	7-65	Fair/Good	Yes	1,250
Albany, N.Y.	502S 650274	7-65	Fair/Good	Yes	1,250
Woodbridge, N. J.	502S 650338	8-65	Fair/Good	Yes	1,250
Albany, N. Y.	502S 660077	5-66	Good	Yes	2,400
Boston, Mass.	502S 650196	4-65	Good	Yes	1,600
Minneapolis, Minn.	502S 650198	5-65	Fair/Good	Yes	$ 1,250
Toledo, Ohio	502S 640320	6-64	Fair	Yes	1,000
Toledo, Ohio	502S 640392	9-64	Good	Yes	1,600
Columbus, Ohio	502S 640403	10-64	Good	Yes	1,600
Columbus, Ohio	502S 650197	5-65	Fair	Yes	1,000
Columbus, Ohio	502S 650425	9-65	Good	Yes	2,500
Chicago, Ill.	502S 650219	5-65	Good	Yes	1,600
Pittsburgh, Pa.	502S 650293	7-65	Fair	Yes	1,00[illegible]
Pittsburgh, Pa.	502S 650398	10-65	Fair	Yes	1,00[illegible]
Houston, Tex.	502S 640366	9-64	Fair/Poor	No (Temporarily)	75[illegible]
Houston, Tex.	502S 640394	10-64	Fair/Good	No (Temporarily)	1,25[illegible]
Houston, Tex.	502S 650004	1-65	Fair	Yes	1,00[illegible]
Houston, Tex.	502S 650199	5-65	Fair/Good	Yes	1,25[illegible]
Houston, Tex.	502S 650401	11-65	Fair/Good	Yes	1,25[illegible]
Houston, Tex.	502S 650426	9-65	Fair/Poor	No (Temporarily)	75[illegible]
Houston, Tex.	502S 650394	9-65	Good	Yes	1,60[illegible]
El Paso, Tex.	502S 650007	3-65	Good	Yes	1,60[illegible]
Dallas, Tex.	502S 650295	7-65	Good	Yes	1,60
Dallas, Tex.	502S 650337	8-65	Good	Yes	1,90
Dallas, Tex.	502S 640423	11-64	Fair/Good	Yes	1,25
New Orleans, La.	502S 650220	5-65	Fair/Good	Yes	1,25
New Orleans, La.	502S 650221	5-65	Fair/Good	Yes	1,25[illegible]
New Orleans, La.	502S 650244	5-65	Fair/Good	Yes	1,2[illegible]
New Orleans, La.	502S 650245	5-65	(Being Overhauled)		3,1[illegible]
New Orleans, La.	502S 650246	6-65	Fair/Good	Yes	1,2[illegible]

INVENTORY LIST OF FORK-LIFT TRUCKS

	Serial Number	Purch. Date	Condition	In Use	Liquidatic. Value
St. Louis, Mo.	502S 650400	10-65	Fair	Yes	$ 1,000
~~Cincinnati~~, Ohio Columbus	502S 650392	9-65	Fair	Yes (With long reach clamp)	3,500
Memphis, Tenn.	502S 640447	1-65	Fair	Yes	1,000
Nashville, Tenn.	502S 660076	5-66	Good	Yes	2,400
Nashville, Tenn.	502S 660234	5-66	Good	Yes	2,400
Pheonix, Arizona	502S 650273	7-65	Good	Yes	2,600
Pheonix, Arizona	502S 650393	9-65	Fair	Yes	1,000
Seattle, Wash.	502S 650006	2-65	Fair/Good	Yes	2,300
Las Vegas, Nevada	502S 640391[illegible]	9-64	Fair/Good	Yes	2,300
Portland, Oregon	502S 660075	5-66	Good	Yes	2,400
					$77,500

Grand Total

SCHEDULE "B"

PURCHASE ORDER

PAGE 1 OF 3

ATLAS®

LIFT TRUCK RENTALS & SALES, INC.

5050 NORTH RIVER ROAD • SCHILLER PARK, ILLINOIS 60176 (Chicago Suburb)

Telephone: Area Code 312 678-3450 • CABLE "ATLASLIFT" • TWX 910-227-0065

THIS NUMBER MUST APPEAR ON ALL INVOICES SHIPPING PAPERS, AND CORRESPONDENCE.

No 10428

1/25/74

SHIPPING INSTRUCTIONS

TO LOCAFRANCE U.S. CORPORATION
919 THIRD AVENUE
NEW YORK, NEW YORK 10022

ATTN. MR PAUL SEIGE V.P.

DESCRIPTION	AMOUNT
THIS PURCHASE ORDER COVERS THE 274 TRUCKS IN THE ATTACHED 9 PAGES.	
42 HYSTERS WITH SERIAL NUMBERS ENDING IN "P"	$189,000
185 MISC: TRUCKS (NOT THOSE REFERRED TO ABOVE OR BELOW)	376,000
47 TRUCKS LISTED BELOW (SEE LIST A)	35,000
274	$600,000

CONTINUED ON PAGE - 2 -

FOR RESALE
653-088

GLEN A. KIRSCH.

E: WE CANNOT ACCEPT MACHINES DAMAGED BY FREEZING

BY _____

PURCHASE ORDER
PAGE 1 OF 3

2 SALES, INC.
0176 (Chicago Suburb)
27-0085

"THE NAME THAT CARRIES WEIGHT"

PURCHASE ORDER

PAGE 2 OF 3

10426

THIS NUMBER MUST APPEAR ON ALL INVOICES, SHIPPING PAPERS, AND CORRESPONDENCE.

ATLAS®

LIFT TRUCK RENTALS & SALES, INC.

"THE NAME THAT CARRIES WEIGHT"

5050 NORTH RIVER ROAD • SCHILLER PARK, ILLINOIS 60176 (Chicago Suburb)

Telephone: Area Code 312 678-3450 • CABLE "ATLASLIFT" • TWX 910-227-0085

1/25/74

SHIPPING INSTRUCTIONS

TO LOCAFRANCE U.S. CORPORATION
919 THIRD AVENUE
NEW YORK, NEW YORK 10022

JAN.	DESCRIPTION	AMOUNT
1	WE UNDERSTAND THAT THE LIFT TRUCKS ARE POWERED BY GASOLINE OR L.P.G., AND ARE GENERALLY IN FAIR TO GOOD OPERATING CONDITION.	
2	IF ANY OF THE TRUCKS, NOT INCLUDING LIST A, ARE NOT QUAD MASTS DEDUCT $1000.00 EACH. IF ANY TRUCKS ARE AUTOMATIC TRANSMISSION INCLUDING LIST A, DEDUCT $300.00 EACH.	
3	WE RESERVE THE RIGHT TO GET OUR MONEY BACK SHOULD WE HAVE ANY PROBLEM OBTAINING CLEAR TITLE and possession.	
4	WE EXPECT TO BE INVOICED, IN TOTAL, UPON MUTUAL ACCEPTANCE. WE WILL PAY AGAINST INDIVIDUAL INVOICES AS WE EITHER PICK UP, OR ACCEPT ON LOCATION.	

CONTINUED ON PAGE - 3

FOR RESALE
653-088

NOTE: WE CANNOT ACCEPT MACHINES DAMAGED BY FREEZING

BY _____

PURCHASE ORDER

ATLAS®

LIFT TRUCK RENTALS & SALES, INC.

10426
THIS NUMBER MUST APPEAR ON ALL INVOICE, SHIPPING PAPERS, AND CORRESPONDENCE.

1/25/74

5050 NORTH RIVER ROAD • SCHILLER PARK, ILLINOIS 60176 (Chicago Suburb)
Telephone: Area Code 312 678-3450 • CABLE "ATLASLIFT" • TWX 910-227-0055

SHIPPING INSTRUCTIONS

TO LOCAFRANCE U.S. CORPORATION
919 THIRD AVENUE
NEW YORK, NEW YORK 10022

LIST A.

DESCRIPTION						AMOUNT
42250568	$1200.00	127-368	$1200.00	C25B544462312		$1200.00
5048167	200.00	173-630	1400.00	2L5 15000		800.00
42250860	1200.00	869-563	1200.00	51701		500.00
ADD47741	600.00	1239-1160	1000.00	C20B526462362		1000.00
500510019	500.00	46-128	500.00	C20B524462362		1000.00
CE55EA132	400.00	AT 40U	500.00	CEC3655711263		700.00
AH099805	500.00	46052695	400.00	AJ 128157		1400.00
T3474436	200.00	422505070	1200.00	CE199K099		400.00
58257	500.00	CEC2204C	400.00	AH112503		500.00
808814	500.00	CEC145-211	400.00	531553106		1200.00
C30392-9846	500.00	CF25254RR11	400.00	4115660048		300.00
FGD050	500.00	CE100EK181	400.00	4464621161		800.00
26101527	1500.00	CE13LP1101131	400.00			
CA0102918	1200.00	LPG203443	400.00			
C40B497688	1200.00	CE121RT77	400.00			
AUTO 31728	200.00	P161101	2000.00			
42250569	500.00	1639-7000	400.00			
4J-1265	1200.00					

FOR RESALE
653-088

TE: WE CANNOT ACCEPT MACHINES DAMAGED BY FREEZING

BY Glenn B. Kinnick

Locafrance U.S. Corporation
919 Third Avenue New York, N.Y. 10022 (212) 371-2555 Telex 12481

January 29, 1974

Mr. Glen A. Kirsch
Vice President
Atlas Lift Truck Rentals & Sales, Inc.
5050 N. River Road
Schiller, Illinois 60176

Dear Mr. Kirsch:

We hereby accept your purchase order annexed hereto subject to the following terms and conditions:

(1) You agree that you will remove all of the equipment on a particular location which is covered by your purchase order.

(2) Upon your recovering possession of the equipment you will advise us, at which time we will invoice you according to the price set forth on your annexed purchase order.

(3) Upon your receipt of our invoice you will make payment for the equipment covered by the invoice, at which time a bill of sale transferring all the right, title and interest of Locafrance to that equipment will be delivered to you.

(4) In the event any piece of equipment that has been removed from a location does not meet the standards set forth in your purchase order, and no agreement can be reached between us on an alternative value for such piece of equipment, you agree, at your expense, to transport the same to your warehouse located in Chicago, Illinois, or to such other location where you hold your property where we will have free access to the equipment you are holding for us, and to hold the same at no cost or expense to Locafrance subject to shipping instructions that may subsequently be given by Locafrance.

(5) This will acknowledge receipt of your down payment of $25,000 for the purchase of the equipment covered by your purchase order. It is agreed that said down payment shall be applied to the last pieces of equipment for which you will be separately invoiced.

Very truly yours,

Jean Vidal
Secretary-Treasurer

JV:fg

Acknowledged By
[illegible], President

SCHEDULE "C"

DESCRIPTION	SERIAL NO.
Towmotor Forklift	502S650045
" "	" 650335
" "	" 660079
" "	" 660316
" "	" 660319
" "	" 670022
" "	42250568
" "	5048167
" "	462S661141
" "	" 661138
Hyster Forklift	C2D-8586P
" "	" -10802P
Towmotor Forklift	502S670306
" "	" 660614
" "	" 650196
" "	" 670051
" "	" 660672
" "	" 660782
" "	" 660610
" "	" 660618
Hyster Forklift	C2D-10341P
" "	" -10342P
Towmotor Forklift	502S660736
" "	" 660619
" "	" 650219
" "	" 670058
" "	" 660314
Hyster Forklift	C2D-10339P
" "	" -10800P
" "	" -5145M
Towmotor Forklift	502S670056
" "	392S660366
" "	502S660377
Hyster Forklift	C2D-9674P
" "	" -10184P
" "	" -10799P
Towmotor Forklift	502S670311
" "	" 670052
" "	" 670308
" "	" 640403
" "	" 650197
" "	" 650392
" "	" 650425
" "	392S670096
" "	502S670060
" "	" 660378
" "	392S660378
" "	502S660608
Hyster Forklift	C2D-8587P
" "	" -10340P
" "	" -10291P
Clark Forklift	CE-55EA-132
Yale Forklift	AHO99805
Automatic Forklift	31728E
White Forklift	MA4026101507
Baker Forklift	FGD020-37510
Clark Forklift	C3039-208
Yale Forklift	AD047741

DESCRIPTION	SERIAL NO.
Towmotor Forklift	5005900010
Clark Forklift	C40B 497-688-1065
" "	" 808814-467
Towmotor Forklift	LT35 3554257
" "	" 3547436
" "	392S660365
" "	502S-670069
" "	" -660306
" "	" -660317
" "	" -660717
" "	" -660609
" "	" -650401
" "	" -640394
" "	" -640366
" "	" -660793
" "	" -660795
" "	" -660796
" "	" -660362
" "	" -650004
" "	" -650075
Hyster Forklift	C2D-8588P
" "	" -9677P
Towmotor Forklift	502S670056
" "	" 650293
" "	392S670097
" "	502S660605
" "	392S660292
" "	502S650424
" "	" 660270
" "	" 660300
" "	" 660318
" "	" 650199
" "	" 660792
" "	462S660975
Hyster Forklift	C2D-10183P
" "	" -10334P
Towmotor Forklift	502S650044
" "	422S660314
" "	" 660319
" "	502S660368
" "	392S660379
" "	502S670433
" "	" 670055
" "	" 660604
" "	" 660790
Clark Forklift	4J-1265
" "	127-368
" "	173-630
" "	869-563
Towmotor Forklift	46-128
" "	502S650220
" "	" 650245
" "	" 650246
" "	" 640423
" "	" 660798
" "	" 660799

DESCRIPTION	SERIAL NO.
Towmotor Forklift	502S660613
Hyster Forklift	C2D-9673P
Towmotor Forklift	502S650221
" "	" 650797
Clark Clipper	CEC2204C
" "	" 145-211
" "	CF25-254RR11
" "	CE100-EK181
" "	CE13LP1101131
" "	LPG203443
" "	CE121RT77
Yale Forklift	P161101
Allis Chalmers F/L	1639-7000
Clark Forklift	C25B544462312
Allis Chalmers F/L	2L5 15000
Baker Forklift	51701
Clark Forklift	C20B526462362
" "	" 524462362
Hyster Forklift	C2D6744N
" "	A1C1E5544L
" "	A10D8L60P
Clark Forklift	CEC3655711263
Yale Forklift	AJ128157
Clark Forklift	CE199KO99
Yale Forklift	AH112503
Towmotor Forklift	502S660791
" "	" 660236
" "	" 66J303
Hyster Forklift	C2D-8584P
Towmotor Forklift	502S650294
" "	" 650428
" "	" 650396
" "	" 670057
" "	" 660309
" "	" 660612
Hyster Forklift	A17D-1693N
Towmotor Forklift	502S650400
" "	" 670064
" "	" 670067
" "	" 660313
" "	392S660367
" "	502S660371
" "	" 660372
" "	" 660379
" "	" 650008
" "	" 660036
" "	" 660037
Hyster Forklift	C2D-9675P
Towmotor Forklift	502S660426
" "	" 640392
" "	" 670059
" "	" 660735
" "	" 660738
" "	" 660737
" "	" 660740

SCHEDULE "C"

DESCRIPTION	SERIAL NO.
Towmotor Forklift	502S660716
" "	392S670063
" "	462S670228
" "	502S650388
" "	" 670053
" "	" 670054
" "	" 660271
" "	" 670061
Hyster Forklift	C2D-8580P
" "	" -8581P
" "	" -10182P
" "	" -10286P
" "	" -10288P
" "	" -10335P
" "	" -10337P
" "	" -10290P

SCHEDULE "D"

March 25, 1974

Schiff Terhune
100 William Street
New York, New York 10038
Attn: Mrs. Lucille Stern

Re: Account of Intermodal Systems Leasing, Inc.

Dear Mrs. Stern:

You are referred to the letter of February 25, 1974 from Florence R. Cohen on behalf of Intermodal Systems Leasing, Inc. (a copy of which is annexed hereto), with regard to office equipment missing from Intermodal's New York office.

May this letter serve as notice to you that certain pieces included in said equipment are the property of Locafrance U.S. Corporation and were in the possession of Intermodal by right of an Agreement of Lease between Locafrance as Lessor and Intermodal as Lessee dated June 21, 1973 and numbered 057/82/000 071/0.

You will find enclosed a list of the missing equipment belonging to this company, and we will appreciate your making any loss proceeds pursuant to such equipment payable to Locafrance U.S. Corporation.

If I can be of any further service in this matter, please do not hesitate to contact me.

Very truly yours,

Jean Vidal
Secretary-Treasurer

Certified Mail No. 304688
Return receipt requested.

JV/jm
enc.

No. 304688

RECEIPT FOR CERTIFIED MAIL—30¢ (plus postage)

POSTMARK OR DATE

SENT TO Schiff Terhune

STREET AND NO. 100 William Street

P.O., STATE AND ZIP CODE New York, New York 10058

OPTIONAL SERVICES FOR ADDITIONAL FEES

RETURN RECEIPT SERVICES
1. Shows to whom and date delivered ..... 15¢
With delivery to addressee only ..... 65¢
2. Shows to whom, date and where delivered .. 35¢
With delivery to addressee only ..... 85¢

DELIVER TO ADDRESSEE ONLY ..... 50¢

SPECIAL DELIVERY (extra fee required) .....

PS Form 3800 Apr. 1971

NO INSURANCE COVERAGE PROVIDED—NOT FOR INTERNATIONAL MAIL

(See other side)

* GPO : 1972 O - 460-743

SENDER: Be sure to follow instructions on other side

PLEASE FURNISH SERVICE(S) INDICATED BY CHECKED BLOCK(S)
(Additional charges required for these services)

☒ Show to whom, date and address where delivered

☒ Deliver ONLY to addressee

RECEIPT
Received the numbered article described below

REGISTERED NO.

CERTIFIED NO. 304688

INSURED NO.

DATE DELIVERED 12/11

SIGNATURE OR NAME OF ADDRESSEE (Must always be filled in)

Schiff Terhune

SIGNATURE OF ADDRESSEE'S AGENT, IF ANY

SHOW WHERE DELIVERED (Only if requested, and include ZIP Code)

100 William St NYC 10038

ITEM	SERIAL NO.	DESCRIPTION	ORIGINAL COST
Calculator	43783	Bowmar Pocket-adpa., case, charger, black.	$ 99.00
"	49647	" " " "	" "
"	69135	" " " "	" "
"	109851	" " " "	95.00
"	142929	" " " "	" "
"	142941	" " " "	" "
"	149765	" " " "	" "
"	5329	Olympia Electronic (light gray) Model CD300	262.00
"	84-13137	" " " "	" "
"	84-13214	" " " "	" "
"	1067431	Olympia Port. Calculator CD100	158.00
"	1067436	" " " "	" "
"	134117	Unicom (tan/gray) Electronic	265.00
"	133933	" " " "	" "
"	133751	" " " "	" "

February 25, 1974

Schiff Terhune
100 William Street
New York, N.Y. 10038
Attn: Mrs. Lucille Stern

Dear Mrs. Stern:

Enclosed please find a list of equipment that is missing from our New York office. You will note that our list provides a complete description of the equipment in question.

Please advise further action to be taken in conjunction with filing a claim for these items.

Your assistance will be most appreciated.

Sincerely yours,

Florence R. Cohen

Enclosure

bcc: Marty Fisher - Locafrance U.S. Corp.

LIST OF MISSING EQUIPMENT

ITEM	COST	SERIAL #	DESCRIPTION (NAME & MODEL)
Typewriter	$ 265.00	11-4008152	IBM Model C Electric (brown/tan)
"	"	11-4815899	" " " "
"	"	13-1162654	" " " "
"	"	13-1192645	" " " "
"	"	13-1220291	" " " "
"	"	13-1250797	" " " "
"	"	13-1311695	" " " "
"	"	17-1181482	" " " "
"	"	17-1305430	" " " "
"	"	17-1467813	" " " "
"	"	17-2746854	" " " "
"	"	17-2311131	" " " "
"	"	4014140	IBM Model 725 Selectric (gray)
Calculator	285.00	C-17731-024	Burroughs Model 3350 Electric (gray
	236.00	C-77743-024	Burroughs Model C5155 Electronic Display (dr. gray)
	525.00	C-81089-024	Burroughs Model 2215 Compact Desk (dr. gray)
	285.00	C-17753-024	Burroughs Model 5255 (dr. gray)
	"	C-53908-024	" " " "
	"	C-9659-024	" " " "
	80.00	43783	Bowmar Pocket - adpa., case, charge black
	"	46213	" " " "
	"	49647	" " " "
	"	58381	" " " "
	"	69135	" " " "
	"	109851	" " " "
	"	129097	" " " "
	"	142929	" " " "
	"	142941	" " " "
	"	149765	" " " "
	300.00	5329	Olympia Electronic (light gray) Model CD300
	300.00	39905	" "
		535219	
		639968	
		5272	
		84-13137	
		84-5118	
		84-13214	
		84-13026	
	126.00	1067401	
		1067403	

	ITEM	COST	SERIAL #	DESCRIPTION (MAKE, MODEL)
1.	Calculator	$375.00	131007	Olivetti Electronic (aqua & black)
2.			18908	
3.			18933	
4.			18935	
5.			18954	
6.			18970	
7.			19030	
8.		1050	277707	
9.			277812	
10.			277866	
11.			277931	
12.			277943	
13.			277969	
14.			277970	
15.			277986	
16.			278010	
17.			278043	
18.			278097	
19.			6534727	
20.			6534805	
21.			6543450	
22.			6553250	
23.			6553263	
24.			6560847	
25.			74803	
26.			6958897	
27.			700198	
28.			A-374803	
29.		365.00	134117	Unicom / tan/gray Electronic
30.			133933	
31.		146	133751	
32.			81601243	Senator Calculator (gray & white

S/T 11,960.00

G/T 22,358.00

LOCAFRANCE U.S. CORPORATION

919 THIRD AVENUE, N.Y. 10022
Telephone: (212) 832-2350

Lease No. 057/32/000 /0 Commitment Date

NAME AND ADDRESS OF LESSEE	~~NAME AND ADDRESS OF SUPPLIER~~
Intermodal Systems Leasing, Inc. 201 East 42 Street New York, N.Y. Incorporated in State of Delaware	

EQUIPMENT LEASED	DESCRIPTION
	See Schedule "A" annexed hereto

LOCATION OF EQUIPMENT: STREET: CITY: COUNTY: STATE:

~~REQUESTED DATE OF DELIVERY~~ RENTAL COMMENCEMENT DATE:

BASE TERM OF LEASE:	PERIOD	NUMBER OF RENTALS	AMOUNT OF EACH RENTAL	SALES TAXES	TOTAL	AMOUNT OF SECURITY DEPOSIT
36 months						$
RENTALS PAYABLE MONTHLY ☒ QUARTERLY ☐						ADVANCE RENTAL(S), $ REPRESENTING PAYMENT FOR THE RENTAL AND THE LAST RENTAL(S) PAYABLE AT THE SIGNING OF THIS LEASE
~~Renewal Rents Payable Annually In Advance~~						

Section 1. LEASE. Lessor hereby leases to Lessee, and Lessee hereby rents from Lessor, subject to the terms, conditions and rents hereinafter set forth, the personal property listed above, or if separately scheduled, in the schedule attached hereto, made a part hereof and marked Schedule "A" together with all replacement parts, additions, repairs and accessories incorporated and/or affixed thereto (the "Equipment"). It is understood that this Lease shall be effective and binding upon Lessor only when executed by Lessor ("Commitment Date") and that the term of this lease shall commence upon delivery of the Equipment to Lessee and acceptance thereof by Lessee (the "Rental Commencement Date").

Section 2. SELECTION AND ORDERING OF EQUIPMENT. Lessee has requested shipment of the type and quantity specified above or in the Schedule A attached hereto and has selected the Equipment from a supplier of Lessee's choice. Lessee has not relied on any statements, representations, warranties, conditions, agreements or understandings, whether oral or written, express or implied, statutory or otherwise, made by Lessor or any of its agents, employees or representatives with respect to the Equipment or any other matter, and any such statements, representations, warranties, conditions, agreements or understandings shall in any way affect Lessee's duty to pay the rent and perform its other obligations as set forth in this Lease.

Section 3. NO WARRANTIES BY LESSOR. Lessee acknowledges that Lessor, Lessor's successor, or Lessor's assignee is not the manufacturer of the Equipment, the agent of the manufacturer nor the distributor thereof and that Lessee has selected the Equipment and the supplier thereof without reliance upon any statements or representations made by Lessor or any of its agents, employees or representatives. LESSEE ALSO ACKNOWLEDGES THAT LESSOR HAS MADE AND MAKES NO WARRANTIES OR REPRESENTATIONS OF WHATEVER NATURE DIRECT OR INDIRECT, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, AS TO THE SUITABILITY, DURABILITY, FITNESS FOR USE, MERCHANTABILITY, DESIGN OR CONDITION OF, OR AS TO THE QUALITY OR CAPACITY OF THE MATERIAL, OR WORKMANSHIP, OR MARKETABILITY, QUALITY OR OTHERWISE OF THE EQUIPMENT, OR OF THE ABILITY OF THE SUPPLIER TO PERFORM, OR THAT THE EQUIPMENT WILL SATISFY THE REQUIREMENTS OF ANY LAW, RULE, SPECIFICATION OR CONTRACT WHICH PROVIDES FOR SPECIFIC MACHINERY OR OPERATIONS OR SPECIAL METHODS IT BEING AGREED THAT ALL SUCH RISKS, AS BETWEEN LESSOR AND LESSEE, ARE TO BE BORNE BY LESSEE AT ITS SOLE RISK AND EXPENSE. Lessee specifically waives all rights of any kind to make a claim against the Lessor, Lessor's successor or Lessor's assignee herein for breach of any warranty of any kind whatsoever.

3.1 ASSUMPTION OF ALL RISK BY LESSEE. Inasmuch as Lessee has selected the Equipment and Supplier and has agreed to assume all risk of loss resulting from the failure of the Equipment to perform, operate or conform to any representation or warranty for any reason whatsoever (including force majeure), it is understood and agreed that Lessee irrevocably waives any claim against Lessor for any loss or damage resulting from any cause, circumstance or event of whatsoever nature including but not limited to, failure of or delay in delivery, delivery to the wrong place, delivery of improper Equipment, damage to the Equipment, defect or unfitness of the Equipment or the installation of the same, governmental regulation, Act of God, strike, embargo or any other cause, circumstances, whether of like or unlike nature and, in connection therewith, Lessee agrees that any of the same shall not relieve Lessee of the obligations to pay rent or of any other obligation under this Lease. Lessor, Lessor's successor or Lessor's assignee, shall have no obligation to install, erect, test, adjust or service the Equipment. Lessee shall, at its own cost and expense; (a) pay all charges and expenses in connection with the operation of all Equipment (b) comply with all laws, ordinances, regulations, requirements and rules with respect to the use, maintenance and operation of the Equipment; (c) make all repairs and replacements required to be made to maintain the Equipment in good condition, reasonable wear and tear excepted.

Section 4. DELIVERY; INSPECTION. In the case that the Equipment is delivered to Lessee by the manufacturer or other supplier of the Equipment, or otherwise, Lessee shall take any and all such action, including without limiting the generality of the foregoing, alterations or modifications, structural or otherwise, to the premises in which the Equipment shall be located, Lessee shall inspect the Equipment within eight (8) business days after its arrival at the address set forth above, and if in good working order and repair shall accept the Equipment, executing and delivering to Lessor a dated notice of receipt in the form annexed hereto and labeled "Delivery Acceptance Receipt". Lessee hereby authorizes Lessor to add to this Lease the serial numbers and other identification data of each item of Equipment as delivered. If, Lessee shall determine that the Equipment is not in good working order and repair it shall, within such eight (8) day period, so inform Lessor in a written notice specifying the defect or other objection to the Equipment and stating that it is rejecting the Equipment. In the event that Lessee gives the rejection notice referred to in the immediately preceding sentence, Lessee shall, on demand by Lessor, pay Lessor any amount theretofore paid or owing by Lessor in respect of the purchase of such Equipment. In the event that Lessor has previously paid an amount in respect of the purchase of such Equipment, then the amount to be paid to Lessor shall include interest computed at the rate of 11% per annum from the date of payment of such amount by Lessor to the date of payment by Lessee. Upon such payment Lessee shall be subrogated to Lessor's claim, if any, against the manufacturer or other supplier of the Equipment, provided that Lessee shall indemnify and save Lessor, Lessor's successor or Lessor's assignee, harmless from any and all loss, damage, cost, expense, including attorney's fees, and liability to the manufacturer or other supplier of the Equipment resulting, directly or indirectly from the wrongful rejection of the Equipment or from failure to comply with the duties imposed upon a merchant buyer by the Uniform Commercial Code, including without limitation, Section 2-602 thereof. However, if within such eight day period Lessee shall not have executed and delivered to Lessor a Delivery Acceptance Receipt or shall have given written notice to Lessor rejecting the Equipment, Lessee agrees that it shall be conclusively presumed, as between Lessor and Lessee, that Lessee has fully inspected the Equipment, that the Equipment is in full compliance with the terms of this Lease, in good condition and repair, and that Lessee is satisfied with and has accepted the Equipment. If, for any reason whatsoever, the Equipment shall not have been delivered to Lessee at the address set forth above and accepted by Lessee in accordance with this Section 4 by the 60th day after the Requested Date of Delivery then Lessor shall have the option to cancel this Lease. Lessor shall, on demand by Lessor, pay Lessor any amount theretofore paid or owing by Lessor in respect of the purchase of such Equipment. In the event that Lessor has previously paid an amount in respect of the purchase of such equipment, then the amount to be paid to Lessor shall include interest computed at the rate of 11% per annum from the date of payment of such amount by Lessor to the date of payment by Lessee. Upon such payment Lessee shall be subrogated to Lessor's claim, if any, against the manufacturer or other supplier of the Equipment, provided that Lessee shall indemnify and save Lessor, Lessor's successor or Lessor's assignee, harmless from any and all loss, damage, cost, expense, including attorney's fees, and liability to the manufacturer or other supplier of the Equipment.

Section 5. CLAIMS AGAINST SUPPLIER. Lessor agrees to use its best efforts to obtain Supplier's agreement that all representations, warranties and agreements, if any, made by Supplier to Lessor or Lessee may be enforced by Lessor and/or Lessee jointly and severally; provided, however, that Lessee agrees that it shall make no claim against Supplier except upon three days prior written notice to Lessor and provided, further, that Lessee shall not be permitted to exercise such right in the event that it shall be in breach of any of the terms, provisions or conditions of this Lease under the Lease.

THE ADDITIONAL PROVISIONS ON THE REVERSE SIDE HEREOF ARE INCLUDED IN, AND MADE A PART OF, THIS LEASE. THIS IS A NON-CANCELLABLE LEASE FOR THE TERM INDICATED ABOVE.

See Rider(s) No. I

NAME OF LESSEE: Intermodal Systems Leasing, Inc.

X _____
Authorized Signature Title

ACCEPTED: _____, 19__

X _____
Authorized Signature Title

By _____
Executive Vice-President or Secretary-Treasurer

X _____
Authorized Signature Title

2 LEASE ORIGINAL

Corporate Seal

Section 6. TERM; RENT. The term of this Lease shall be for the number of months set forth on the front of this Lease and shall commence upon the Commencement Date as defined in Section 1 hereof.

The amount and number of rental payments are as set forth on the front of this Lease and shall be payable monthly or quarterly in advance at Lessor's address indicated hereinabove [illegible] on or before the first day of each calendar month or quarter, as the case may be, commencing with the month or quarter in which the Commencement Date occurs. The first rental payment shall be made on the Commencement Date and shall be a full monthly payment if the Commencement Date occurs on the first day of a month, and if the Commencement Date occurs on any other day of the month, the first rental payment shall be made on the Commencement Date in an amount equal to the rental for the number of days remaining in the month in which the Commencement Date occurs, plus the rental for the first full month or quarter, as the case may be. All rental payments are to be made without notice or demand and without any deduction or set off for any reason whatsoever. The manufacturer, selected, purchased, [illegible] use, operation and maintenance of the Equipment, and the existence of Lessor's [illegible] shall not relieve Lessee of its obligations hereunder.

Section 7. TITLE. The Equipment shall at all times [illegible] remain the property of the Lessor and Lessee shall have no right, title or interest therein or thereto except as herein expressly set forth in this Lease and Lessee shall not [illegible] the Equipment. At the end of the term of this Lease or upon any earlier termination hereof, Lessee shall, at its own cost and expense, deliver the Equipment to Lessor or its designee in the same condition as when received by Lessee, reasonable wear and tear resulting from proper use thereof alone excepted, and shall [illegible] all liens and legal processes of creditors of the Lessee and keep all the Equipment free and clear from all such claims, liens and processes. The Equipment is and shall at all times remain personal property notwithstanding that it may be affixed or attached to real property or any improvements thereon and Lessee shall not affix the Equipment to any real property or any improvements thereon without the prior written consent of Lessor. If any person claims any interest in the Equipment by reason of such affixation, Lessee shall, at its own cost and expense, defend against such claim. Lessee shall not remove the Equipment from the location specified in Section 8 hereof without the prior written consent of Lessor. Lessee shall not sell, lease, sublease, encumber or part with possession of the Equipment or any part thereof.

Section 8. LOCATION OF EQUIPMENT. The Equipment shall be kept at the address set forth above on the front of this Lease under the caption "Location of Equipment" and shall not be removed therefrom to [illegible] or in part without the written consent of the Lessor, nor shall Lessee, without Lessor's prior written consent, part with possession or control of the Equipment or any part thereof.

Section 9. USE, MAINTENANCE AND REPAIR. The Lessee shall use the Equipment solely in the conduct of its business in a careful and proper manner and in compliance with all legal requirements. The Lessee, at its own cost and expense, shall keep the Equipment in good repair, condition and working order and shall furnish any and all parts and labor required for that purpose but, at Lessor's request, Lessee shall, at its sole cost and expense, enter into a full maintenance contract with the Supplier or any other entity satisfactory to Lessor and shall maintain such contract in effect throughout the term of this Lease.

Lessee shall not modify the Equipment in any way without the prior written consent of Lessor. All accessories, parts and replacements for or which are added to or become attached to the Equipment or any item thereof shall immediately become the property of Lessor, shall be deemed incorporated in and an accession to the Equipment and subject to the terms of the Lease as if originally leased hereunder. Lessee shall execute such documents relating to such accessions, parts and replacements as Lessor may deem necessary, including financing and continuation statements under the Uniform Commercial Code. Lessor shall have the right, from time to time, during reasonable business hours to enter upon Lessee's premises or elsewhere for the purpose of confirming the existence, condition and proper maintenance of the Equipment.

Section 10. INSURANCE. Lessee shall insure both Lessor and Lessee as their interests may appear and as named insureds or in respect to liabilities, including without limitation, personal injury, death, damages to or the use of property resulting from the ownership, use and operation of the Equipment, with insurers satisfactory to Lessor, in amounts satisfactory to Lessor and under policies satisfactory to Lessor. In addition, Lessee shall insure the Equipment with insurance satisfactory to Lessor, for the full replacement value new thereof [illegible] consideration for depreciation against all risks of loss, theft, destruction or damage to the Equipment. Lessee shall be [illegible] for any loss not covered by insurance. Such insurance for loss, theft, destruction or damage to the Equipment shall provide that payments covering losses, theft, destruction or damage shall be payable to Lessor and shall be endorsed as hereinafter provided in Section 11. The insurance under any policies obtained in accordance with this Section shall provide that payments covering losses, theft, destruction or damage shall be made notwithstanding any act, omission or neglect of Lessee or any other person which might otherwise result in a forfeiture of said insurance or any portion thereof and that such insurance shall not be invalidated by any act, omission or neglect of Lessor or any owner of the Equipment or any other person having an interest therein, and that such insurance shall not be terminated or materially altered without at least 30 days prior written notice of any alteration or cancellation of such policies. Such insurers shall further agree that said insurance as to Lessor and its assigns shall not be invalidated by any act, omission or neglect of Lessee or any other person having an interest therein, and that such insurance shall not be terminated or materially altered without at least 30 days prior written notice to Lessor and its assigns. Lessee shall furnish Lessor with certificates evidencing such insurance coverage before the delivery of the Equipment to Lessee and thereafter within 30 days after written request by Lessor. Lessee shall furnish Lessor with new certificates evidencing the renewal of any such insurance coverage not less than 30 days prior to the expiration dates of the expiring policies. Lessee hereby irrevocably appoints Lessor as Lessee's attorney-in-fact to make claim for, receive payment of, and execute and endorse all documents, checks or drafts received in payment for loss or damage under any such insurance policy and acknowledges that the power-of-attorney granted hereby is coupled with an interest.

Section 11. RISK OF LOSS OR DAMAGE. All risks of loss, theft, destruction and damage to the equipment from whatever cause, are assumed by Lessee, who shall be responsible therefor throughout the term of this Lease. In the event of loss, theft, destruction or damage of any kind whatsoever from any and every cause whatsoever to any item or items or all of the Equipment, Lessee, at the option of Lessor, shall promptly at the time of such occurrence and at its sole cost and expense:

(a) place the same in good repair, condition and working order; or

(b) replace the same with Equipment of the same make and model, satisfactory to Lessor, and in good repair, condition and working order; or

(c) if the Equipment or a material portion thereof is determined by Lessor to be lost, stolen, destroyed or damaged beyond repair, pay Lessor the aggregate amount of all unpaid rentals payable throughout the entire term of this Lease, and this Lease shall thereupon be deemed terminated. Lessee's obligations to perform under this section shall not be affected by Lessor's inability to obtain insurance proceeds for the loss, theft, destruction or damage nor shall Lessee be obligated to undertake, by insurance or otherwise, the collection of such proceeds or of any claim against any person for loss, theft, destruction or damage to the Equipment.

If and when Lessor shall have received any insurance proceeds on account of any loss, theft, destruction or damage to the Equipment and if Lessor, in its sole judgment, shall be satisfied that Lessee has properly performed the obligations undertaken by it under this Section 11, Lessor shall pay over to Lessee out of such proceeds the actual amounts expended by Lessee under subparagraphs (a), (b) or (c), as the case may be, of this section. In no event shall Lessor be required to pay Lessee an amount greater than the net amount of the insurance proceeds received by it.

No loss of or damage to any of the Equipment shall impair any obligations of the Lessee under this Lease, including without limitation, the obligation to pay rent which shall continue in full force and effect until cancellation or termination of this Lease.

Section 12. INDEMNITY. Lessee assumes all responsibility for the manufacture, selection, purchase, delivery, possession, use, condition, operation, maintenance, repair, testing and/or return of the Equipment, and, as between the parties hereto, the liability, if any, for personal injuries and property damage howsoever arising from or incidental thereto, whether such injuries be to agents or employees of Lessee or to third parties and whether such damage be to the property of Lessee or of others, Lessee will indemnify and save Lessor, Lessor's successor and Lessor's assigns and their agents, servants, successors and assigns, harmless of, from and against all claims, costs, expenses (including reasonable fees of attorneys and accountants), liabilities, loses and damages resulting directly or in any way indirectly from or pertaining to the Equipment or the manufacture, selection, purchase, delivery, possession, use, operation, maintenance, repair, testing and/or return thereof and the recovery of claims under insurance policies thereon. Lessee's obligations under this Section 12 shall survive the expiration or termination of this Lease.

Section 13. SECURITY DEPOSIT. Simultaneously with the execution of this Lease, Lessee is depositing with Lessor, in addition to an amount at least equal to the first installment of rent as specified in Section 6 hereof, the sum specified on the face of this Lease under the caption "Amount of Security Deposit", which sum shall be retained by Lessor as security for the payment and performance of Lessee's obligations under this Lease. It is agreed that in the event Lessee defaults in respect of any of the terms, provisions and conditions of this Lease, including, but not limited to, the payment of rent and additional rent, Lessor, without limiting any of its rights under this Lease, may use, apply or retain the whole or any part of the security so described to the extent required for the performance of any obligations as to which Lessee is in default and, in any such instances, Lessee shall on demand apply any such sums to Lessor so that Lessor may at all times be secured by the full amount specified on the front of this Lease. In the event that Lessee shall fully and faithfully comply with all of the terms, provisions, covenants and conditions of this Lease, the security shall be returned to Lessee after the date fixed as the end of this Lease and after surrender of the Equipment in accordance with Section 19 hereof. In the event of an assignment of this Lease by the Lessor, Lessor shall have the right to transfer the security to its assignee and Lessor shall thereupon be released by Lessee from all liability for the return of such security, and it is agreed that the provisions hereof shall apply to every assignment made of the security to a new assignee. Lessee covenants that it will not assign or encumber or attempt to assign or encumber the moneys deposited herein as security and that neither Lessor nor its successors or assigns shall be bound by any such assignment, encumbrance, attempted assignment or attempted encumbrance.

Section 14. TAXES. Lessee shall pay all costs, expenses, fees and charges incurred in connection with the use and operation of the Equipment during the Lease term hereunder. Lessee shall pay any and all sales, use, excise, ad valorem, stamp, documentary, personal property and other taxes, and declare, report and pay all assessments and other governmental charges whatsoever by whomsoever payable on or relating to the Equipment and the purpose, sale rental, use or operation thereof (other than federal or state income tax based by Lessor) as and when the same shall become due and payable. In addition, Lessee shall keep the Equipment free and clear of all levies, liens and encumbrances. Lessee shall have no obligation to dispute or contest the imposition or collection or the basis of computation of any such tax or other governmental charge payable by Lessee.

Section 15. COLLECTION COSTS. If any of the installments of rents and amounts of additional rent provided for herein are not paid within [illegible] days after such installments shall be due, Lessee agrees to pay to Lessor, at Lessor's option, in addition to any and all other remedies provided in this Lease or available at law or in equity, at and for Lessor's costs of collection, interest at the rate of 15% per annum on all sums not paid when due. The exercise by Lessor of the option granted to it under this Section 15 shall not be deemed a waiver of any of the rights and/or remedies otherwise granted to it under this Lease, including, without limitation, the right, granted to it under Section 17 hereof, to declare the Lease in default.

Section 16. ASSIGNMENT; SUBLEASE.

16.1 BY LESSEE. Lessee shall not assign, transfer, pledge or otherwise dispose of this Lease or its interest hereunder nor enter into any sublease, lend any of the Equipment, or permit it to be used by anyone other than Lessee or its authorized employees without the prior written consent of Lessor.

16.2 BY LESSOR. Lessee acknowledges notice of Lessor's intention to assign Lessor's interest in this Lease, and Lessee agrees that Lessor may assign this Lease and/or mortgage the Equipment, in whole or in part, without notice to Lessee but upon requiring any assignee thereof Lessee shall promptly acknowledge receipt thereof in writing. Each such assignee and/or mortgagee will have all of the rights, but none of the obligations of Lessor under this Lease except the obligation to continue to lend the Equipment subject to this Lease in accordance with the terms and conditions hereof. Lessee agrees that it shall not assert against any assignee or mortgagee of Lessor any defense, setoff, [illegible] claim or counterclaim that Lessee may have against Lessor and Lessee shall remain liable for all obligations hereunder in spite of any such assignment or mortgage. Lessor's assignee or mortgagee may forever assign the Lease or mortgage the Equipment, as the case may be, under the same terms and conditions. Upon any assignment or reassignment of this Lease by Lessee or Lessee's successor in interest, at the request of Lessor or any of its successors or assigns, Lessee shall execute, acknowledge and deliver a statement in writing certifying if it this Lease is unmodified and in full force and effect (or if there have been modifications, that the same is in full force and effect as modified and stating the modifications), and the dates to which the rents and other charges have been paid in advance, and if there are any defaults claimed by Lessee. Such statement shall also contain an agreement by Lessee to make all future payments of rents and other charges under the Lease directly to Lessor or Lessor's successor in interest, as the case may be.

Section 17. DEFAULT. If Lessee shall default in the payments of any sums to be paid hereunder and such default shall continue for more than ten (10) days after Lessor has given notice thereof (except that Lessee shall not be entitled to notice of default in the case of non-payment or late payment of rent), or if Lessee has breached any other provision of this Lease, or if a petition in bankruptcy or for reorganization or for the appointment of a receiver or a trustee of any part of the property of Lessee, or any other proceedings for the relief of debtors shall be filed by or against Lessee or if Lessee shall make a general assignment for the benefit of creditors, or suspend business or commit any act amounting to insolvency, or if an attachment shall be levied or a tax lien filed against any of Lessee's property, or if Lessee shall make a voluntary or involuntary assignment or transfer of all, or substantially all, of its property, or an unauthorized assignment of its interest hereunder, or if Lessee, in Lessor's sole opinion, shall undergo any material change as to impair Lessor's risk, including any eventualities expressly contemplated by the terms of this Lease, then in any of such events, Lessor, at its option, may declare the Lessee to be in default, in which case Lessor shall have the right to exercise any one or more of the following remedies:

(a) Lessor may recover from Lessee as immediately due and payable the entire amount of unpaid rentals for the balance of the term of this Lease, together with any and all other charges which may be then or which become due and payable, including without limitation, costs of collection and attorneys' fees (not to exceed 20% of the amount collected);

(b) Lessor may terminate this Lease and/or within thirty (30) days thereof, demand a return of the Equipment to the destination specified by Lessor, freight prepaid by Lessee;

(c) Lessor, without demand, or notice to or service of process, and without any court order or other process of law, may take possession of any or all items of Equipment, wherever the Equipment may be located for that purpose entering upon any premises owned or leased by Lessee without liability for any damages occasioned by such taking possession. Lessor may thereafter hold the Equipment free and clear of this Lease and of any rights of Lessee hereunder. The return or retaking of the Equipment shall not constitute termination of this Lease. Lessor may sell all or any part of the Equipment free and clear of any claims of Lessee at private sale or sales, upon ten (10) days prior written notice to Lessee, at such price or prices and upon such terms as Lessor may elect, or at public sale or sales at which Lessor may bid for and purchase any or all of the Equipment. Lessor shall also have the right to assume all or any of the Equipment free and clear of any claims of Lessee, upon ten (10) days prior written notice to Lessee, at such retail or rental or service rates and upon such terms and conditions as Lessor may elect. Lessee agrees that after making arrangements and lessens of the Equipment shall have the right to enter upon Lessee's premises to inspect such Equipment and that Lessor may conduct the sales and or leasing transactions on Lessee's premises. The net proceeds of any such sale or sales after the net rentals received under any such lease, less 5% of the Total Cost of the Equipment as the case may be, shall be applied (a) first to the payment of all costs and expenses of every kind and nature incurred in connection with or incidental to the seizing, preparing for sale or lease and the selling or leasing of the Equipment, including attorney's fees, (not to exceed 25% of the amount collected) and then (b) to the total rentals for the entire term provided for herein and then remaining unpaid. The Lessee shall remain liable to the Lessor for the payment of any deficiencies, together with interest thereon computed at the rate of fifteen percent (15%) per annum. The surplus, if any, shall be liquidated damages for the breach of this agreement and shall be payable to Lessor.

(d) Lessor may pursue any other remedy at law or in equity.

Except as to such item or items of Equipment with respect to which Lessor elects to terminate this Lease, this Lease shall continue in full force and effect and Lessee shall be bound to continue to pay and perform its obligations hereunder. Any repossession or resale of any item of Equipment shall not bar an action for a deficiency as above provided, and the bringing of an action for the entry of judgment against the Lessee shall not bar the Lessor's right to repossess any or all items of Equipment.

Section 18. [illegible]

Section 19. SURRENDER. At the expiration of this Lease or upon demand by Lessor made pursuant to paragraph (b) of Section 17 hereof, or upon the termination of this Lease in any manner whatever, Lessee shall have the Equipment ready for pickup and to the destination specified by Lessor and by such carrier as Lessor shall designate. Lessee shall return the Equipment in good operating order and repair. Any and all transportation costs involved in the returning of the Equipment as aforesaid shall be borne by the Lessee. Transportation costs shall be deemed to include insurance for the full replacement value of the Equipment without consideration for depreciation.

Section 20. MISCELLANEOUS.

20.1. REMEDIES CUMULATIVE. Lessor may pursue any remedy available to it at [illegible] or in equity. Each and every right and remedy hereby specifically given to Lessor may be exercised from time to time or simultaneously and as often and in such order as may be deemed expedient by Lessor. All such rights and remedies shall be cumulative and the exercise of one shall not be deemed a waiver of the right to exercise any other or others. No delay or omission by Lessor in the exercise of any such power or remedy and no renewal or extension of any payments due hereunder shall impair any such power or remedy or shall be construed to be a waiver of any default or an acquiescence thereto.

20.2. NON-CANCELLABILITY. The Lease hereunder shall continue in full force and effect and be non-cancellable, except in accordance with its terms for the rental term herein provided.

20.3 LESSOR'S RIGHT TO CURE DEFAULTS. In the event of failure of Lessee to pay any taxes, assessments, fees, charges or taxes (as provided in Section 16 hereof) or to procure or maintain insurance as provided in Section 10 hereof, or failure to pay or perform any other obligation hereunder, Lessor shall have the right, but shall not be obligated, upon ten (10) days or at option to Lessor to act in Lessee's place and stead, and in such event Lessee shall repay Lessor the sums thereof with the next payments of rent as additional rent together with interest (at the rate of 15% per annum) from the date of any such payment by Lessor. The exercise by Lessor of its rights granted to it under this subsection shall not be deemed a waiver of any of the rights and/or remedies otherwise granted to it under this Lease, including, without limitation, the right, granted to it under Section 17 hereof, to declare the Lessee in default.

20.4 ENTIRE AGREEMENT. This Lease, together with the schedule attached hereto, if any, constitutes the entire agreement between the parties hereto, and can only be modified by further agreement in writing signed by both such parties. No representation, warranties or agreements, oral or written, expressed or implied have been made by either party hereto with respect to the Lease hereunder or to the Equipment covered hereby, except as expressly provided herein.

20.5. COOPERATION. Lessee shall provide Lessor with such corporate resolutions, opinions of counsel, certificates and other documents as Lessor may reasonably request from time to time. Lessee shall execute such documents and acknowledgments, including without limitation, financing and continuation statements under the Uniform Commercial Code as Lessor shall require for filing or recording this Lease or for effecting a pledge or assignment hereof, with the Secretary of State of the state of incorporation or residence of Lessee, the Secretary of State of the state in which Lessee's principal office is located and, if different, in the state of incorporation or residence) and the office of the County Clerk of the county in which the Equipment leased hereunder is [illegible] used and such other places as Lessor shall deem necessary or desirable. Lessee or Lessor authorizes to file any such statements without the signature of Lessee or any of its subsidiaries. Whenever requested by Lessor, Lessee will join with Lessor in executing financing statements pursuant to the Uniform Commercial Code.

20.6 AGREEMENT AS LEASE. VENUE; SERVICE OF PROCESS. IT IS HEREBY STIPULATED BY AND BETWEEN LESSOR AND LESSEE THAT THIS AGREEMENT SHALL BE DEEMED TO BE A LEASE. IT IS FURTHER STIPULATED THAT SHOULD LESSEE [illegible] WITH ANY OF THE CLAUSES NEW YORK, REGARDLESS OF THE OTHER JURISDICTIONS OF WHICH THE PARTIES SHALL BE SUBJECT HEREIN, AND SAID LEASE SHALL BE INTERPRETED AND THE RIGHTS AND LIABILITIES OF THE PARTIES DETERMINED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK AS PART OF THE CONSIDERATION FOR LESSOR'S EXECUTING THIS LEASE, LESSEE HEREBY [illegible] THAT ALL ACTIONS OR PROCEEDINGS ARISING, DIRECTLY OR INDIRECTLY, FROM THIS LEASE SHALL BE LITIGATED ONLY IN COURTS LOCATED WITHIN THE STATE OF NEW YORK, AND LESSEE HEREBY CONSENTS TO THE JURISDICTION OF ANY COURT LOCATED WITHIN THE STATE OF NEW YORK AND WAIVES PERSONAL SERVICE OF ANY AND ALL PROCESS UPON LESSEE HEREIN. CONSENTS THAT ALL SUCH SERVICE [illegible] MAY BE MADE BY CERTIFIED OR REGISTERED MAIL, RETURN RECEIPT REQUESTED, DIRECTED TO LESSEE AT THE ADDRESS HEREINABOVE STATED; AND SERVICE SO MADE SHALL BE COMPLETE FIVE [illegible] AFTER THE SAME HAS BEEN POSTED AS AFORESAID.

20.7. TAX TREATMENT. No representation is, or has been, made as to the treatment for income tax purposes of payments hereunder, it being understood that whether a particular agreement is to be treated for federal income tax purposes as a lease depends upon the facts and circumstances in each case.

20.8. COUNTERPARTS AND RECORDING. This Lease may be executed in any number of required counterparts, each counterpart constituting an original. The parties are to execute, acknowledge and deliver such further counterparts of this agreement as may be required at any time in order to comply with the provisions of any applicable law requiring the recording or filing of this agreement or a copy thereof in any public office of the United States, any state or any political or governmental subdivision of any state. Lessee agrees to pay the fees and charges imposed by law for such mandatory recording or filing and the necessary expenses of the Lessor, if any, in effecting such recording or filing.

20.9. FAILURE TO SURRENDER AS EXTENSION. If, upon the expiration of the full term of this Lease as above provided for, Lessee does not immediately return the Equipment to Lessor and Lessor does not request its return, then the Equipment shall continue to be held and leased under and in accordance with the conditions in this agreement contained, and this agreement shall thereupon be extended indefinitely as to term, but thereafter either the Lessee or Lessor upon thirty (30) days notice in writing to the other may terminate it, whereupon Lessee shall forthwith deliver the equipment to Lessor.

20.10. HEADINGS. The section headings contained herein have been inserted as a matter of convenience only and shall not be deemed to affect the interpretation of the text.

20.11. SEVERABILITY. If a provision hereof or any remedy herein provided for shall be invalid under any applicable law, such provision shall be inoperable and deemed omitted, but the same shall not affect the remaining provisions hereof which shall be construed to effect the maximum intent thereof.

20.12 NOTICE. Any notice or other communication, including rent payments, authorized or required by this Lease shall be made to the parties hereto in writing at the addresses above set forth on the front of this Lease or to such other address as either party may designate to the other by notice similarly served, by personal delivery or by first class mail, postage prepaid. All notices and other communications (other than rent payments) shall be deemed given two (2) days after the date of mailing.

20.13 INTEREST. In the event that the rate of interest at any time payable hereunder by either party to the other shall exceed the legal amount so payable, then the interest to be paid shall be computed at the highest rate which shall then be legally permissible.

20.14 ACCEPTANCE BY LESSOR. Neither this Lease nor any modification hereto, oral or written, shall be deemed binding upon Lessor unless executed by Lessor's Executive Vice President or Secretary-Treasurer. No representative or other agent of Lessor shall be deemed to have the authority to bind Lessor in any respect.

RIDER NUMBER I TO LEASE AGREEMENT NO. 057/82/000 ---/0

BETWEEN LOCAFRANCE U.S. CORPORATION, LESSOR

AND INTERMODAL SYSTEMS LEASING, INC., LESSEE

The printed part of the Lease is hereby amended, modified and supplemented as follows. To the extent that the printed part of the Lease and this Rider are compatible, each shall be deemed in addition to and in expansion of, the other. Wherever there is any conflict between this Rider and the printed part of the Lease, the provisions of this Rider are paramount and the Lease shall be construed accordingly.

1. This Lease is being entered into in conjunction with an Agreement made as of the day of June, 1974 by and between Lessor and Lessee (the "Agreement"). If Lessee is in default to Lessor under the terms of the Agreement, Lessee shall be in default under the terms of this Lease and Lessor shall be entitled to the same rights and to exercise the same remedies available to it upon a default hereunder, all in addition to any remedies granted to it in the Agreement. If Lessee is in default to Lessor under this Lease it shall also be in default to Lessor under the Agreement and Lessor shall be entitled to the rights and to exercise the remedies granted to it under both this Lease and the Agreement.

2. Lessor does hereby consent that the Lessee may enter into agreements to sublease the Equipment and to the Equipment being located at the sublessee's premises provided, however, that the following conditions shall be satisfied and the Lessor shall indicate in the manner hereafter stated its consent that such conditions have been satisfied:

2.1. Lessee and the sublessee shall enter into an Agreement of Sublease (the "Sublease") in form and substance as annexed hereto, made part hereof and marked Exhibit "E-1", a copy of which executed by Lessee and the sublessee shall be delivered to Lessor.

2.2. The rental payments payable by all sublessees shall not, in the aggregate, be less than the aggregate rental payments to be made by Lessee to Lessor under this Lease, and rental payments by sublessees shall be payable monthly.

2.3. The owner, and/or operator, as the case may be, of the location at which the Equipment is to be located shall execute waivers with respect to the Equipment and acknowledging Lessor's right to regain possession of the Equipment as Lessor shall require, and in form and substance satisfactory to Lessor, the originals of which shall be delivered to Lessor.

2.4. Lessee shall provide Lessor with two (2) duly executed UCC-1 Financing Statements with respect to the subleased Equipment and the Sublease, which Financing Statement shall designate Lessee as Secured Party, the sublessee as Debtor and Lessor as Assignee of the Secured Party.

2.5. The Lessee shall execute and deliver to Lessor duplicate original copies of an Assignment of Sublease and Rentals in form and substance as annexed hereto, made part hereof and marked Exhibit "E-2", as collateral security for the performance of its obligations under this Lease and under the Agreement.

2.6. Lessor shall not be deemed to have consented to a sublease unless and until all of the conditions set forth above, and such other conditions as Lessor may reasonably require, are satisfied. Lessor shall indicate its consent to a Sublease by accepting, in writing and on the Assignment of Sublease and Rentals, said Assignment and returning one duplicate original copy to the Lessee.

3. Lessee consents and agrees that its obligations under the Lease including, but not limited to, its obligations to pay the amounts (whether designated as rentals or otherwise) which become due as set forth in the Lease are absolute and unconditional, and Lessee promises so to perform the same notwithstanding any defense, set-off or counterclaim whatsoever, whether by reason of breach by a sublessee of a Sublease or otherwise, which Lessee may or might now or hereafter have as against a sublessee (the Lessee reserving its right to have recourse directly against the sublessee on account of any such defense, set-off or counterclaim). The Lessor shall be entitled to receive all amounts payable by a sublessee under its Sublease. Lessor shall promptly remit to Lessee the difference between the aggregate amount received by Lessor from sublessees and the amount of rent payable by Lessee to Lessor under this Lease subject, however to the rights granted to Lessor to hold and dispose of the entire aggregate amount received by Lessor from sublessees as more particularly described in the Assignment of Sublease and Rentals, Exhibit "E-2" annexed hereto.

3.1 In the event Lessor has received from sublessees rental payments which, in the aggregate, are in excess of the amount of rental payments from Lessee to Lessor, and Lessor has not remitted the amount of such excess to Lessee, Lessee shall have no right to offset or otherwise apply the amount of such excess against any rental payments or any other amounts then owing or that will become owing from Lessee to Lessor under this Lease provided, however, that if on a date that a rental payment is due from Lessee to Lessor hereunder, the Lessor is in possession of such excess and the aggregate rental payments received for that month from sublessees is less than

the amount of Lessee's rental payment to Lessor for that month, the Lessee shall have the right to apply such excess in reduction of that month's rental payment to Lessor. Lessor shall remain liable for any deficiency between the amount so applied and the amount of the rental payment due by Lessee to Lessor for that month.

4. Notwithstanding Lessor's consent to the subleasing of the Equipment, it is understood and agreed that Lessee shall be and remain primarily and not secondarily liable to Lessor for the full and prompt payment and performance of all of its obligations, accrued and executory, including, but not limited to, the payment of rent under this Lease. Lessee consents and agrees that a default by a sublessee under a Sublease shall constitute a default by Lessee under this Lease provided, however, that in the event of a default in the payment of any sums to be paid under the sublease, whether denominated as sent or additional rent, Lessee shall have a period of ten (10) days from the date that notice of such default is given by Lessor to Lessee to cure or cause to be cured such default before it shall be in default under the Lease.

5. Provided that all Lease rental payments and all other payments required to be made under the Lease have been made by Lessee, and Lessee has not been, and is not, in default under the terms of the Lease or the Agreement, or if Lessee has been, or is, in default under the terms of this Lease or the Agreement such default has been cured or waived:

5.1 During the term of the Lease, Lessee shall have the option to purchase any item of the Equipment for a purchase price equal to the outstanding rentals to the expiration of the base term of the Lease attributable to the item of the Equipment being purchased, discounted to the then present day value at the rate of 10%. Lessee shall convey good title to Lessor, free and clear of any claim or lien by Lessor and free and clear of any claims, liens or encumbrances except those created by actions of Lessee or a sublessee. The option shall be exercised by Lessee giving written notice to Lessor that it is exercising the option granted herein, including a date for closing, Lessor giving written notice to Lessee of the purchase price and Lessor receiving, on or before the closing date, the purchase price by bank cashiers or certified check at its offices in exchange for a bill of sale transferring Lessor's title in the item of the Equipment to Lessee.

5.2 At the end of the base term of the Lease, Lessee shall have the option to purchase the Equipment for a purchase price of one dollar ($1.00) per item of the Equipment. Lessee shall convey good title to Lessor, free and clear of any claim or lien by Lessor and free and clear of any claims, liens or encumbrances except those created by actions of Lessee or a sublessee. The closing of the purchase by Lessee shall take place on the date of expiration of the base term of the Lease

and on such date the option price shall become due and payable by Lessee to Lessor. In the event that prior to the expiration of the base term of the Lease, Lessee has not given written notice to Lessor that it elects not to exercise the option, it shall be conclusively presumed that Lessee has exercised the purchase option.

6. In the event a sublessee exercises a purchase option as may be granted to it in a Sublease, Lessee shall be conclusively presumed to have exercised its option at the purchase price set forth in Subsection 5.1. of this Lease, which purchase price shall be due and payable from Lessee to Lessor, by bank cashiers or certified check, at the closing of the sale by Lessee to a sublessee. Upon receipt of the notice of exercise of the purchase option from a sublessee, Lessor shall give written notice to Lessee of the purchase price payable by Lessee to Lessor, upon receipt of which, on or before the closing date provided for in such notice, Lessor shall deliver to Lessee a bill of sale to Lessee transferring all of Lessor's right, title and interest in the item(s) of the Equipment being purchased by the sublessee.

INTERMODAL SYSTEMS LEASING, INC.	LOCAFRANCE U.S. CORPORATION
By_____	By_____
Title	Title
Date	Date

SCHEDULE "F"

TOLEDO	Towmotor Forklift	- 502S670024	
	" "	-502S640392	
	" "	-502S640320	
	" "	-502S660740	
	" "	-502S660737	
	" "	-502S660735	
	" "	-502S670068	
	" "	-502S660738	
	" "	-502S660716	TOTAL: 9
ST. LOUIS	Towmotor Forklift	-502S660379	
	" "	-502S660371	
	" "	-502S660372	
	" "	-502S660313	
	" "	-502S650400	
	" "	-502S670064	
	" "	-502S670067	TOTAL: 7
OKLAHOMA CITY	Hyster Forklift	--C2D-6744N**	
	" "	-A10D8L60P**	
	Yale Forklift	-AJ128157	
	"	-AH112503	TOTAL: 4
MIAMI	Towmotor Forklift	-502S660602	
	" "	-502S670055	
	" "	-502S660790	
	" "	-502S670433	
	Clark Forklift	-457341265	
	"	-127858367	
	"	-1736301164	
	"	-868486563	
	"	-46343128	TOTAL: 9
KANAS CITY	Towmotor Forklift	-392S670069	
	"	- 502S660394	TOTAL : 3
	"	-502S670307	
CINNCINATTI	Hyster	-C2D9674P	
	"	-C2D10184P	TOTAL: 2
PHILADELPHIA	Towmotor	-502S660303	
	"	-502S660620	
	"	-502S660791	
		- 502S660236	
	Hyster	-C2D8584P	
			TOTAL: 5
			TOTAL: 39

~~201 THIRD AVENUE, NEW YORK~~

~~Telephone (212) 949-7660~~

Sub-Lease No._____ Commitment Date_____

NAME AND ADDRESS OF ~~LESSEE~~ Sublessor:	NAME AND ADDRESS OF ~~SUPPLIER~~ Sublessee:
Intermodal Systems Leasing, Inc. 201 East 42nd Street New York, New York Incorporated in State of Delaware	Incorp. in State of:

EQUIPMENT LEASED	DESCRIPTION	
	See Schedule "A" annexed hereto	

LOCATION OF EQUIPMENT:	STREET:
	CITY:
	COUNTY:
	STATE:

~~REQUESTED DATE OF DELIVERY:~~ RENTAL COMMENCEMENT DATE:

BASE TERM OF LEASE:	PERIOD	NUMBER OF RENTALS	AMOUNT OF EACH RENTAL	SALES TAXES	TOTAL	AMOUNT OF SECURITY DEPOSIT
						$
RENTALS PAYABLE MONTHLY ☒ QUARTERLY ☐						ADVANCE RENTAL(S). $ REPRESENTING PAYMENT FOR THE RENTAL AND THE LAST RENTAL(S) PAYABLE AT THE SIGNING OF THIS LEASE
Renewal Rental Payable Annually In Advance						

Section 1. LEASE. Lessor hereby leases to Lessee, and Lessee hereby rents from Lessor, subject to the terms, conditions and rents hereinafter set forth, the personal property listed above, or if separately scheduled, on the schedule attached hereto, made a part hereof and marked Schedule "A" together with all replacement parts, additions, repairs and accessories incorporated therein and/or affixed thereto (the "Equipment"). It is understood that this Lease shall be effective and binding upon Lessor only when executed by Lessor ("Commitment Date") and that the term of this lease shall commence upon delivery and acceptance of the Equipment (the "Rental Commencement Date").

Section 2. SELECTION AND ORDERING OF EQUIPMENT. Lessee has requested Equipment of the kind and quantity specified above or in the Schedule A attached hereto and [illegible] and no representation as to Equipment or any other matter contained herein in any way affects Lessee's duty to pay the rents and perform its other obligations as set forth in this Lease.

Section 3. NO WARRANTIES BY LESSOR. Lessee acknowledges that Lessor, Lessor's successor, or Lessor's assignee is not the manufacturer of the Equipment, the agent of the manufacturer nor the distributor thereof and that Lessee has selected the Equipment hereto irrespective of prior to having requested the Lessor to purchase it for leasing to the Lessee and/or [illegible]. LESSEE ALSO ACKNOWLEDGES THAT LESSOR HAS MADE AND MAKES NO WARRANTIES OR REPRESENTATIONS OF WHATSOEVER NATURE DIRECT OR INDIRECT, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION AS TO THE SUITABILITY, DURABILITY, FITNESS FOR USE, MERCHANTABILITY, DESIGN OR CONDITION OF, OR AS TO THE QUALITY OR CAPACITY OF THE MATERIAL OR WORKMANSHIP, OR MARKETABILITY, QUALITY OR OTHERWISE OF THE EQUIPMENT, OR OF THE ABILITY OF THE SUPPLIER TO PERFORM OR THAT THE EQUIPMENT WILL SATISFY THE REQUIREMENTS OF ANY LAW, RULE, SPECIFICATION OR CONTRACT WHICH PROVIDES FOR SPECIFIC MACHINERY OR OPERATIONS OR SPECIAL METHODS. IT BEING AGREED THAT ALL SUCH RISKS, AS BETWEEN LESSOR AND LESSEE, ARE TO BE BORNE BY LESSEE AT ITS SOLE RISK AND EXPENSE. Lessee specifically waives all rights of any kind to make a claim against the Lessor, Lessor's successor or Lessor's assigns herein for breach of any warranty of any kind whatsoever.

11 ASSUMPTION OF ALL RISK BY LESSEE. Inasmuch as Lessee has selected [illegible] the Equipment [illegible] and has agreed to assume all risk of loss resulting from [illegible] any reason whatsoever (including force majeure), it is understood and agreed that Lessee irrevocably waives any claim against Lessor for any loss or damage resulting from any cause, circumstance or event of whatsoever nature including but not limited to, failure of or delay in delivery to the wrong place, delivery of improper Equipment, damage to the Equipment, defect or unfitness of the Equipment or the installation of the same, governmental regulation, Act of God, strikes, embargo or any other cause, circumstances, whether of like or unlike nature and, in connection therewith, Lessee agrees that any of the same shall not relieve Lessee of the obligations to pay rent or of any other obligation under this Lease. Lessor, Lessor's successor or Lessor's assignee, shall have no obligation to install, erect, test, adjust or service the Equipment. Lessee shall, at its own cost and expense: (a) pay all charges and expenses in connection with the operation of all Equipment (b) comply with all laws, ordinances, regulations, requirements and rules with respect to the use, maintenance and operation of the Equipment; (c) make all repairs and replacements required to be made to maintain the Equipment in good condition, reasonable wear and tear excepted.

~~12 DELIVERY; INSPECTION~~ [illegible] Equipment [illegible] and other [illegible] Lessee agrees to take care and use such action, and using materials and parts for purposes of the foregoing, alterations or modifications, structural or otherwise, as are necessary to install the Equipment, where agreed to by Lessor and as

See Rider(s) No. I

NAME OF LESSEE: _____

X _____
Authorized Signature Title

ACCEPTED: _____, 19__

X _____
Authorized Signature Title

By _____
Executive Vice-President or Secretary-Treasurer

X _____
Authorized Signature Title

2 LEASE ORIGINAL

Corporate Seal

Section 6. TERM; RENT. The term of this Lease shall be for the number of months set forth on the face of this Lease and shall commence upon the Commencement Date as defined in Section 1 hereof.

The amount and number of rent payments are set forth on the face of this Lease, and shall be payable monthly in advance on the first day of each calendar month during the term of this Lease, the first rental payment to be due on the Commencement Date. Lessee's obligation to pay rent shall be absolute and unconditional and shall not be affected by any circumstances whatsoever, including, without limitation, any abatement, set-off, counterclaim, recoupment, defense or other right which Lessee may have against Lessor or anyone else for any reason whatsoever. Each rental payment is due and payable in full on the first day of each successive month, in advance, without notice or demand and without any deduction or set-off for any reason whatsoever. If any rental payment is not received by Lessor within ten (10) days after its due date, Lessee shall pay a late charge equal to five percent (5%) of the overdue payment. Lessee's obligation to pay late charges shall be in addition to all other rights and remedies available to Lessor hereunder or at law and shall not in any way be construed as a waiver of Lessee's default in making payments when due. All rents shall be paid without notice or demand and without any deduction whatsoever. The manufacturer, in making payment, may rely conclusively upon a certificate executed by Lessor stating that Lessee has accepted the Equipment and that this Lease is in full force and effect.

Section 7. LOCATION OF EQUIPMENT. The Equipment shall be kept at the address set forth above on the face of this Lease under the caption "Location of Equipment" and shall not be removed therefrom in whole or in part without the written consent of the Lessor, nor shall Lessee, without Lessor's prior written consent, part with possession or control of the Equipment or sell, pledge, mortgage or otherwise encumber the Equipment or any part thereof.

Section 8. USE, MAINTENANCE AND REPAIR. The Lessee shall use the Equipment solely in the conduct of its business in a careful and proper manner and in compliance with all legal requirements. The Lessee, at its own cost and expense, shall keep the Equipment in good repair, condition and working order and shall furnish any and all parts and labor required for that purpose but, at Lessor's request, Lessee shall, at its sole cost and expense, enter into a full maintenance contract with the Supplier or any other party satisfactory to Lessor and shall maintain such contract in effect throughout the term of this Lease.

Lessee shall not affix the Equipment or any part thereof to any real property or improvement thereon in such a manner that the Equipment may become a fixture or lose its character as personal property. If any of the Equipment is affixed to real property or improvements thereon, Lessee shall, at Lessor's request, obtain and deliver to Lessor a waiver of any interest in the Equipment signed by any person having an interest in such real property or improvements. Lessee shall not make any alterations or additions to the Equipment without the prior written consent of Lessor. All additions, parts and replacements for or which are affixed to or become attached to the Equipment or any item thereof shall immediately become the property of Lessor, shall be deemed accessions to the Equipment and subject to the terms of this Lease as if originally leased hereunder. Lessee shall execute such documents relating to such accessions, parts and replacements as Lessor may reasonably request, including financing and continuation statements under the Uniform Commercial Code. Lessor shall have the right, from time to time, during reasonable business hours to enter upon the premises of Lessee for the purpose of confirming the existence, condition and proper maintenance of the Equipment.

Section 9. USE. Lessee shall use the Equipment solely in the conduct of its business in a careful and proper manner and in compliance with all legal requirements. The Lessee, at its own cost and expense, shall keep the Equipment in good repair, condition and working order and shall furnish any and all parts and labor required for that purpose but, at Lessor's request, Lessee shall, at its sole cost and expense, enter into a full maintenance contract with the Supplier or any other party satisfactory to Lessor and shall maintain such contract in effect throughout the term of this Lease.

Lessee shall not affix the Equipment or any part thereof to any real property or improvement thereon in such a manner that the Equipment may become a fixture or lose its character as personal property. If any of the Equipment is affixed to real property or improvements thereon, Lessee shall, at the request of Lessor, obtain and deliver to Lessor a waiver of any interest in the Equipment signed by any person having an interest in such real property or improvements. Lessee shall not make any alterations or additions to the Equipment without the prior written consent of Lessor. All additions, parts and replacements for or which are affixed to or become attached to the Equipment or any item thereof shall immediately become the property of Lessor, shall be deemed accessions to the Equipment and subject to the terms of this Lease as if originally leased hereunder. Lessee shall execute such documents relating to such accessions, parts and replacements as Lessor may reasonably request, including financing and continuation statements under the Uniform Commercial Code. Lessor shall have the right, from time to time, during reasonable business hours to enter upon the premises of Lessee for the purpose of confirming the existence, condition and proper maintenance of the Equipment.

Section 10. INSURANCE. During the entire term of this Lease and Lessee at its own expense shall obtain and at all times thereafter maintain with companies satisfactory to Lessor, including without limitation, personal, automobile and employer's liability, bodily injury, death, damage to or loss of use of property resulting from the ownership, use and operation of the Equipment, with insurers satisfactory to Lessor and under policies satisfactory to Lessor, in addition, Lessee shall insure the Equipment, with insurance satisfactory to Lessor, for the full replacement value of the Equipment for destruction, theft and loss, theft, destruction or damage to the Equipment. Lessee shall be liable for any loss not covered by insurance. Such insurance shall provide that property covering losses, theft, destruction or damage shall be payable to Lessor and shall be endorsed as more fully provided in Section 11. The insurance policies or any certificates obtained in accordance with the terms shall name by endorsement on the respective insurance policies issued by them as additional insureds, Lessor and its successors and assigns. Each insurance shall further provide that said insurance as to Lessor and its successors shall not be invalidated by any act, omission or neglect of Lessee, in case of the loss or destruction of any Equipment or damage to any part thereof, Lessee shall give prompt notice to Lessor and shall promptly repair or replace the Equipment as nearly as possible to the condition and repair in which it was immediately prior to such loss or damage. Lessee hereby irrevocably appoints Lessor as Lessee's attorney-in-fact to make claim for, receive payment of, and execute and endorse all documents, checks or drafts received in payment for loss or damage under any such insurance policy and acknowledges that the power-of-attorney granted hereby is coupled with an interest.

Section 11. RISK OF LOSS OR DAMAGE. All risks of loss, theft, destruction and damage to the equipment from whatever cause, are assumed by Lessee, who shall be responsible therefor throughout the term of this Lease. In the event of loss, theft, destruction or damage of any kind whatsoever from any and every cause whatsoever to any item or items or all of the Equipment, Lessee, at the option of Lessor, shall promptly at the time of such occurrence and at its sole cost and expense:

(a) place the same in good repair, condition and working order; or

(b) replace the same with Equipment of the same make and model, satisfactory to Lessor, and in good repair, condition and working order; or

(c) if the Equipment or a material portion thereof is determined by Lessor to be lost, stolen, destroyed or damaged beyond repair, pay Lessor the aggregate amount of all unpaid rentals payable throughout the entire term of this Lease, and this Lease shall thereupon be deemed terminated. Lessee's obligations to perform under this section shall not be affected by Lessor's inability to obtain insurance proceeds for the loss, theft, destruction or damage nor shall Lessor be co-insured to understand, by its silence or otherwise, the commission of such occurrence or of any claim against any person for loss, theft, destruction or damage to the Equipment.

If and when Lessor shall have received any insurance proceeds on account of any loss, theft, or destruction or damage to the Equipment and if Lessor, in its sole judgment, shall be satisfied that Lessee has properly performed the obligations undertaken by it under this Section 11, Lessor shall pay over to Lessee out of such proceeds the actual amounts expended by Lessee under subparagraphs (a), (b) or (c), as the case may be, of this section in no event shall Lessor be required to pay Lessee an amount greater than the net amount of the insurance proceeds received by it.

No loss of or damage to any of the Equipment shall impair any obligations of the Lessee under the Lease, including without limitation, the obligation to pay rent which shall continue in full force and effect until cancellation or termination of this Lease.

Section 12. INDEMNITY. Lessee assumes all responsibility for the manufacture, selection, purchase, delivery, possession, use, condition, operation maintenance, repair, testing and/or return of the Equipment, and, as between the parties hereto, the liability, if any, for personal or other bodily damage resulting from or the defects thereto, whether such injuries be to agents or employees of Lessee or to third parties and whether any damage be to the property of Lessee or of others, Lessee will indemnify and save Lessor, Lessor's successors and assigns, harmless of, from and against all claims, costs, expenses including reasonable fees of attorneys and accountants, interest and penalties resulting directly or in any way connected with or attributable to the Equipment or the manufacture, selection, purchase, delivery, possession, use, condition, operation, return or failure to return thereof and the recovery of the proceeds of insurance thereon.

Section 13. SECURITY DEPOSIT. Simultaneously with the execution of this Lease, Lessee is delivering to Lessor, in addition to an amount at least equal to the first installments of rent as specified in Section 6 hereof, the sum specified on the face of this Lease (the "Security Deposit"), which sum shall be retained by Lessor as security for the payment and performance of Lessee's obligations under this Lease. It is agreed that in the event that Lessee defaults in respect of any of the terms, provisions and conditions of this Lease, including, but not limited to, the payment of rents and additional rent, Lessor, without limiting any of its rights under this Lease, may use, apply or retain the whole or any part of the Security Deposit to the extent required for the payment of any liabilities as to which Lessee is in default and, in any such instance, Lessee shall on demand make any such sums to Lessor that may at the time be required to be held by Lessor under this Lease. In the event that Lessee shall duly and faithfully comply with all of the terms, provisions, covenants and conditions of this Lease, the Security shall be returned to Lessee after the said fixed at the end of this Lease and after surrender of the Equipment in accordance with Section 19 hereof. In the event of an assignment of this Lease by the Lessee, Lessor shall have the right to transfer the Security to the assignee and Lessee shall thereupon be released by Lessor from all liability for the return of such Security, and it is agreed that the provisions hereof shall apply to every assignment made of the Security to a new assignee. Lessee covenants that it will not assign or encumber or attempt to assign or encumber the monies deposited herein as security and that neither Lessor nor its successors or assigns shall be bound by any such assignment, encumbrance, attempted assignment or attempted encumbrance.

Section 14. TAXES. Lessee shall pay all taxes, expenses, fees and charges incurred in connection with the use and operation of the Equipment during the Lease term hereunder. Lessee shall pay any and all sales, use, excise, ad valorem, stamp, documentary, personal property and other taxes, and charges, reports and pay all assessments and other governmental charges whatsoever by whomsoever payable on or relating to the Equipment and the purchase, sale rental, use or operation thereof (other than federal or state income tax payable by Lessor) as and when the same shall become due and payable. In addition Lessee shall keep the Equipment free and clear of all levies, liens and encumbrances. Lessee shall have no obligation to discharge or contest the imposition or collection or the basis of computation of any such tax or other governmental charge payable by Lessee.

Section 15. COLLECTION COSTS. In the event any installment of rents and amounts of additional rent provided for herein are not paid within (10) days after such installments shall be due, Lessee agrees to pay to Lessor, at Lessor's option, on demand and in addition to any and all other remedies provided in this Lease or available at law or in equity, as and for Lessor's costs of collection, interest at the rate of 15% per annum on all sums not paid when due. The exercise by Lessor of the rights granted to it under this Section 15 shall not be deemed a waiver of any of the rights and/or remedies otherwise granted to it under this Lease, including, without limitation, the right, granted to it under Section 17 hereof, to declare the Lease in default.

Section 16. ASSIGNMENT; SUBLEASE.

16.1 BY LESSEE. Lessee shall not assign, transfer, pledge or otherwise dispose of this Lease or its interest hereunder nor enter into any sublease, lend any of the Equipment, or permit it to be used by anyone other than Lessee or its duly authorized employees.

16.2 BY LESSOR. Lessor reserves the right to assign Lessor's interest in this Lease, and Lessee agrees that Lessor may assign this Lease and/or mortgage the Equipment, in whole or in part, without notice to Lessee but upon receiving any rental thereof Lessee shall personally acknowledge receipt thereof in writing. Each such assignee or mortgagee shall have all of the rights, but none of the obligations of Lessor under the Lease except that it will be entitled to enjoy the Equipment subject to this Lease in accordance with the terms and conditions hereof. Lessee agrees that it shall not assert against any assignee or mortgagee of Lessor any defense, setoff, recoupment, claim or counterclaim that Lessee may have against Lessor and Lessee shall remain liable for all obligations hereunder in spite of any such assignment or mortgage. Lessor's assignee or mortgagee may forever enjoy the Lease or mortgage, on the same terms and conditions of rental imposed by this Lease or Lessor's successors in interest, as the case may be. Lessee shall, at the request of Lessor or assignee with respect to interest, as the case may be, execute, acknowledge and deliver a statement in writing to the effect that this Lease is unmodified and in full force and effect (or if there have been modifications that the same is in full force and effect as modified and stating the modifications) and that all of the rents and other charges have been paid in advance, and if there are any defaults claimed by Lessee. Such statement shall also contain an agreement by Lessee to make all future payments of rents and other charges under the Lease directly to Lessor or Lessor's successor or assigns, as the case may be.

Section 17. DEFAULT. If Lessee shall default in the payment of any sums to be paid hereunder and such default shall continue for more than ten (10) days after Lessor has given notice thereof (except that Lessee shall not be entitled to any notice in the case of nonpayment of rent) or if Lessee has breached any other promise or term of the Lease, or if a petition in bankruptcy or for reorganization or for the appointment of a receiver or a trustee of any part of the property of Lessee or any other proceedings for the relief of debtors shall be filed by or against Lessee or if Lessee shall make a general assignment for the benefit of creditors, or suspend business or commit any act tending to hinder, delay or defraud creditors or if Lessee or a substantial part of Lessee's property, or if Lessee shall make a voluntary or involuntary assignment or transfer of all, or substantially all, of its property, or an unsatisfactory settlement of its interest hereunder, or if Lessee, in Lessor's sole opinion, shall undergo any material change as to Lessee Lessor's risk, including any overtaking expressly contemplated by the terms of this Lease, then in any of such events, Lessor, at its option, may declare the Lessee to be in default, in which case Lessor shall have the right to exercise any one or more of the following remedies:

(a) Lessor may recover from Lessee as immediately due and payable the entire amount of unpaid rentals for the balance of the term of this Lease, together with any and all other charges which may be then or which become due and payable, including, without limitation, costs of collection and attorneys' fees (not to exceed 25% of the amounts collected);

(b) Lessor may terminate this Lease and on thirty (30) days thereof, demand a return of the Equipment to the destination specified by Lessor, freight prepaid by Lessee;

(c) Lessor, without demand, or notice to or actions of Lessee, and without any court order or other process of law may take possession of any or all items of Equipment, wherever the Equipment may be located, for that purpose entering upon any premises owned or leased by Lessee without liability for any damages occasioned by such taking possession. Lessor may thereafter hold the Equipment free and clear of any claims of Lessee or anyone claiming under Lessee, and may sell all or any part of the Equipment at private sale or sales, upon ten (10) days prior written notice to Lessee, at such price or prices and upon such terms as Lessor may elect, or at public sale or sales at which Lessor may bid for and purchase any or all of the Equipment. In any sale Lessor shall have the right to offset all or any of the Equipment free and clear of any claims of Lessee, upon ten (10) days prior written notice to Lessee, at such rents or rentals and upon such terms and conditions as Lessor may elect. Lessee agrees that proceeds received upon any disposition of the Equipment shall first be applied to expenses incurred by Lessor in connection with the repossession, storage, repair, sale or lease and the taking of custody of the Equipment, including attorney's fees (not to exceed 25% of the amounts collected) and then (ii) to the unpaid rentals for the unexpired term provided for herein and then remaining unpaid. The Lessee shall remain liable to Lessor for the payment of any deficiencies, together with interest thereon computed at the rate of fifteen percent (15%) per annum. The balance, if any, shall be retained by Lessor as liquidated damages for the breach of this agreement and shall be payable to Lessor.

(d) Lessor may pursue any other remedy at law or in equity.

Except as to items of Equipment with respect to which Lessor elects to terminate this Lease, this Lease shall continue in full force and effect and Lessee shall be bound to continue to pay and perform its obligations hereunder. Any repossession or resale of any item of Equipment shall not give an action for a deficiency or some proceeds, and the bringing of an action for the entry of judgment against the Lessee shall not bar the Lessor's right to repossess any or all items of Equipment.

Section 18. OPTION TO RENEW. Lessee shall have the option to renew this Lease with respect to the Equipment as an entirety for such additional term, if any, and for such rental as is specified on the front of this Lease; provided that such option shall be exercised only upon Lessee's giving written notice to Lessor or Lessor's agent to do so. Lessee's renewal notice shall be given during the third month preceding the expiration of the original term of this Lease, during which no deductions by Lessee's check in an amount equal to the aforesaid rental. Except as provided in the first year of the renewal period.

Section 19. SURRENDER. At the expiration of this Lease or upon demand by Lessor made pursuant to subparagraph (a) of Section 17 hereof, or upon the termination of this Lease in any manner whatever, Lessee shall load the Equipment and at the time to the destination designated by Lessor and by such car or in Lessor shall designate. Lessee shall return the Equipment in good operating order and repair. Any and all transportation costs involved in the returning of the Equipment as aforesaid shall be borne by the Lessee. Transportation costs shall be deemed to include insurance for the full replacement value of the Equipment without consideration for depreciation.

Section 20. MISCELLANEOUS.

20.1. REMEDIES CUMULATIVE. Lessor may pursue any remedy available to it at law or in equity. Each and every right and remedy hereby specifically given to Lessor may be exercised from time to time or simultaneously and as often and in such order as may be deemed expedient by Lessor. All such rights and remedies shall be cumulative and the exercise of one shall not be deemed a waiver of the right to exercise any other or others. No delay or omission by Lessor in the exercise of any such power or remedy and no renewal or extension of any payments due hereunder shall impair any such power or remedy or shall be construed to be a waiver of any default or an acquiescence therein.

20.2. NON-CANCELLABILITY. The Lease hereunder shall continue in full force and effect and be non-cancellable, except in accordance with its terms for the rental term herein provided.

20.3 LESSOR'S RIGHT TO CURE DEFAULTS. In the event of failure of Lessee to pay any taxes, expenses, fees, charges or taxes (as provided in Section 16 above) or to procure or maintain insurance (as provided in Section 12 hereof) or failure to pay or perform any other obligation hereunder, Lessor shall have the right, but shall not be obligated, upon ten (10) days prior notice to Lessee to act in Lessee's place and stead, and in such event Lessee shall repay Lessor the cost thereof with the next payment of rent as additional rent together with interest at the rate of 15% per annum from the date of any such payment by Lessor. The exercise by Lessor of the rights granted to it under this subsection shall not be deemed a waiver of any of the rights and/or remedies otherwise granted to it under this Lease, including, without limitation, the right, granted to it under Section 17 hereof, to declare the Lease in default.

20.4. ENTIRE AGREEMENT. This Lease, together with the schedule attached hereto, if any, constitutes the entire agreement between the parties hereto, and can only be modified by further agreement in writing signed by both such parties. No representations, warranties or agreements, oral or written, expressed or implied have been made by either party hereto with respect to the Lease hereunder or to the Equipment covered hereby, except as expressly provided herein.

20.5. COOPERATION. Lessee will from time to time with such corporate resolutions, opinions of counsel, certificates and other documents as Lessor may reasonably request from time to time. Lessee shall execute such financing and acknowledgements including without limitation, financing and continuation statements under the Uniform Commercial Code as Lessor shall require for filing or recording of this Lease or for effecting a pledge or assignment thereof, with the Secretary of State of the state of incorporation of the lessee of Lessor, the Secretary of State of the state in which Lessee's principal office is located (if different from the state of incorporation or residence) and the office of any County Clerk of the county in which the Equipment hereby hereunder is located and Lessee will pay all fees, taxes and costs incurred in connection therewith. Lessee shall execute and deliver to Lessor, upon request by Lessor, all such instruments and certificates as may be necessary or desirable in order to preserve, protect and perfect the interest of Lessor and its assigns hereunder and to enable Lessor to exercise and enforce its rights hereunder with respect to the Equipment. Lessee shall pay all costs incurred in connection with the preparation, execution and recording of any document requested by Lessor pursuant to this Section 20.5. Lessee hereby irrevocably appoints Lessor as its attorney-in-fact to execute any such financing statements pursuant to the Uniform Commercial Code.

20.6 AGREEMENT AS LEASE; VENUE; SERVICE OF PROCESS. IT IS HEREBY STIPULATED BY AND BETWEEN LESSOR AND LESSEE THAT THIS AGREEMENT SHALL BE DEEMED TO BE A LEASE. IT IS FURTHER STIPULATED THAT EACH LESSEE HAS MADE ITS NEW YORK COUNTY, NEW YORK, REGARDLESS OF THE ORDER IN WHICH THE SIGNATURES OF THE PARTIES SHALL BE AFFIXED HEREIN AND SAID LEASE SHALL BE INTERPRETED AND THE RIGHTS AND LIABILITIES OF THE PARTIES DETERMINED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK AS PART OF THE CONSIDERATION FOR LESSOR'S EXECUTING THIS LEASE LESSEE HEREBY AGREES THAT ALL ACTIONS OR PROCEEDINGS ARISING DIRECTLY OR INDIRECTLY HEREBY SHALL BE LITIGATED ONLY IN COURTS LOCATED WITHIN THE STATE OF NEW YORK AND LESSEE HEREBY SUBMITS TO THE JURISDICTION OF ANY SUCH COURT WITHIN THE STATE OF NEW YORK AND WAIVES PERSONAL SERVICE OF ANY AND ALL PROCESS UPON LESSEE HEREIN, CONSENTS THAT ALL SUCH SERVICE OF PROCESS MAY BE MADE BY CERTIFIED OR REGISTERED MAIL, RETURN RECEIPT REQUESTED, DIRECTED TO LESSEE AT THE ADDRESS HEREIN ABOVE STATED, AND SERVICE SO MADE SHALL BE COMPLETE FIVE (5) DAYS AFTER THE SAME HAS BEEN POSTED AS AFORESAID.

20.7 TAX TREATMENT. No representation is or has been made as to the treatment for income tax purposes of payments hereunder, it being understood that whether a particular agreement is to be treated for federal income tax purposes as a lease depends upon the facts and circumstances in each case.

20.8 COUNTERPARTS AND RECORDING. This Lease may be executed in any number of separate counterparts, each counterpart constituting an original. The parties are to execute, acknowledge and deliver such further counterparts of this agreement as may be required at any time in order to comply with the provisions of any applicable law governing the recording or filing of this agreement or a copy hereof in any public office of the United States, any state or any political or governmental subdivision of any state. Lessee agrees to pay the fees and charges imposed by law for such mandatory recording or filing and the necessary expenses of the Lessor, if any, in effecting such recording or filing.

20.9 FAILURE TO SURRENDER AS EXTENSION. If, upon the expiration of the full term of this Lease as above provided for, Lessee does not immediately return the Equipment to Lessor and Lessor does not request its return, (i) the Equipment shall continue to be held and leased under and in accordance with the conditions of this agreement contained, and this agreement shall thereupon be extended indefinitely as to term, but thereafter either the Lessee or Lessor upon thirty (30) days notice in writing to the other may terminate it, whereupon Lessee shall forthwith deliver the equipment to Lessor.

20.10 HEADINGS. The section headings as to contents herein are inserted as a matter of convenience only and shall not be referred to affect the interpretation of the text.

20.11 SEVERABILITY. If a court of competent jurisdiction shall hold any provision hereof invalid or unenforceable, such provision shall be inapplicable and deemed omitted, but the same shall not affect the remaining provisions hereof which shall be construed to effect the intention hereof to the fullest extent permitted.

20.12 NOTICES. All notices or other communications required by this Lease shall be made to the parties hereto in writing at the addresses above set forth on the front of this Lease or to such other address as either party may designate to the other by notice similarly served, by personal delivery or by first class mail, postage prepaid. All notices and other communications (other than rent payments) shall be deemed given two (2) days after the date of mailing.

20.13. INTEREST. In the event that the rate of interest at any time payable hereunder by either party to the other shall exceed the legal amount so payable, then the interest to be paid shall be computed at the highest rate which may be lawfully permitted.

20.14 ACCEPTANCE BY LESSOR. Neither this Lease nor any modification hereto, oral or written shall be deemed binding upon Lessor unless executed by Lessor's Executive Vice President or Secretary-Treasurer. No representative or other agent of Lessor shall be deemed to have the authority to bind Lessor in any respect.

RIDER NUMBER 1 TO SUBLEASE AGREEMENT NO.

BETWEEN INTERMODAL SYSTEMS LEASING, INC., SUBLESSOR

AND , SUBLESSEE

The printed part of this Sublease is hereby amended, modified and supplemented as follows: To the extent that the printed part of the Sublease and this Rider are compatible, each shall be deemed in addition to and in expansion of, the other. Wherever there is any conflict between this Rider and the printed part of this Sublease, the provisions of this Rider are paramount and the Sublease shall be construed accordingly.

1. For purposes of this Sublease only, and without in any way changing any of the terms, provisions, conditions and covenants in the printed part of this Sublease or this Rider, all references in the printed part of this Sublease to "Lessor" shall mean "Sublessor", all references to "Lease" shall mean "Sublease" and all references to "Lessee" shall mean "Sublessee".

2. This Sublease, and the rights of Sublessor and Sublessee hereunder, shall be subordinate in all respects to an Agreement of Lease No. 057/82/000 ---/0 (the "Prime Lease") between Locafrance U.S. Corporation, with a place of business at 919 Third Avenue, New York, New York ("Locafrance") as lessor, and Sublessor as lessee, and to the rights of Locafrance thereunder.

3. Sublessee hereby acknowledges Sublessor's right to assign its interests under this Sublease to Locafrance, and that it shall do so and consents to such assignment, and in consideration of this Sublease, the Sublessee agrees that its obligation to pay directly to Locafrance the amounts (whether designated as rentals or otherwise) which become due as set forth in the Sublease shall be absolutely unconditional, and it promises so to pay the same to Locafrance at its address hereinbefore stated, notwithstanding any defense, set-off or counterclaim whatsoever, whether by reason of breach of the Sublease or otherwise, which it may or might now or hereafter have as against the Sublessor (the Sublessee reserving its right to have recourse directly against the Sublessor on account of any such defense, set-off or counterclaim).

4. Sublessor and Sublessee each recognize and agree that Locafrance is the owner of the Equipment and the Equipment shall at all times remain the property of Locafrance, and that neither Sublessor or Sublessee has any right, title, interest or equity in the Equipment whatsoever except as may be set forth in the Prime Lease and Sublease. Sublessee shall at all times protect and defend, at its own cost and expense, the title of Locafrance from and against all claims, liens and legal process of creditors of Sublessee and Sublessor, and keep all the Equipment free and clear from all such claims, liens and process. The Equipment is, and shall at all times remain, personal property irrespective of the way it may be affixed to the realty, and Sublessee shall maintain each item of Equipment so that it may be removed from any building in which it is placed without damaging such building. Sublessee will so notify any landlord

or mortgagee of the premises in which the Equipment is kept and will obtain the agreement thereto by all such landlords and mortgagees. If at any time during the term hereof Locafrance supplies Sublessee with labels, plates or other markings, stating that the Equipment is owned by Locafrance, Sublessee shall affix and keep the same upon a prominent place on each and every item comprising the Equipment.

5. Any default by Sublessor under the Prime Lease shall be construed to be a default by Sublessee under this Sublease, thereby entitling Locafrance to exercise and to avail itself of all of its rights and remedies under the Prime Lease; provided, however, if Sublessee is not then in default under this Sublease, Sublessee may, if Locafrance consents in writing, continue to have the quiet use and enjoyment of the Equipment on such terms and conditions, including the payment of rentals, as may be satisfactory to Locafrance.

6. Notwithstanding the sublease of the Equipment under this Sublease, it is understood and agreed that Sublessor shall be and remain primarily and not secondarily liable to Locafrance for the full and prompt payment and performance by Sublessor of all of its obligations, accrued and executory, under the Prime Lease.

INTERMODAL SYSTEMS LEASING, INC.

By_____

Sublessee

By_____

Optional Purchase Option Provision

Provided that all lease rental payments and all other payments required to be made under the Sublease have been made by Sublessee, and Sublessee has not been and is not then, in default under the terms of the Sublease, of if Sublessee has been, or is, in default under the terms of this Sublease such default has been cured, or waived by Sublessor and Locafrance, at the expiration of the base term of this Sublease Sublessee shall have the option to purchase all of Sublessor's right, title and interest in the Equipment at a purchase price equal to the then fair market value of the Equipment determined by an independent appraiser selected by

Locafrance. The cost of such appraisal shall be borne by Sublessee. The option shall be exercised by Sublessee giving written notice to Locafrance and to Sublessor that it is exercising the option granted herein, which notice shall include the date this Sublease expires. On such date the option price shall be due and payable by Sublessee to Sublessor, upon receipt of which Sublessor shall deliver to Sublessee a Bill of Sale transferring all of Sublessor's right, title and interest in the Equipment to Sublessee.

Schedules and Exhibits to be attached to Exhibit "G" - Form of Sublease

1. Schedule "A" - Equipment to be covered by the Sublease.

ASSIGNMENT
OF
SUBLEASE AND RENTALS

Sublessee_____Date of Sublease_____

Address of Sublessee_____

Balance of unpaid rental $_____Sublease No._____

As collateral security for the full and faithful performance of its obligations under its lease agreement with Locafrance U.S. Corporation, Lease No. 057/82/000 /0 (the "Lease") and for the full and faithful performance of its obligations to Locafrance U.S. Corporation under an agreement dated June , 1974 by and between Locafrance U.S. Corporation and Intermodal Systems Leasing, Inc. (the "Agreement"), the undersigned hereby assigns, transfers and sets over to Locafrance U.S. Corporation, 919 Third Avenue, New York, N.Y. 10022, its successors and assigns (the "Assignee") all of its right, title and interest, but none of its obligations as Sublessor in and to the above identified Sublease Agreement (the "Sublease") and the equipment described therein, including, but not limited to, the right to receive all rentals due and to become due thereunder, any and all contracts of surety, guaranty, notes or collateral of any kind, maintenance agreements and insurance policies and all rights and remedies thereunder, including the right but not the obligation, either in the name of the undersigned, or in the name of Locafrance, to take all action the undersigned might otherwise take to enforce the Sublease or said contracts, agreements and policies. Except as specifically provided herein, Locafrance does not assume any of the liabilities or obligations of the undersigned under the Sublease. The undersigned warrants, represents and covenants that: said Sublease is genuine, and enforceable in accordance with its terms; is the only Sublease executed in respect of said property; is and will continue free from defenses and offsets; payment of rent is not conditioned on any further act; the unpaid balance of rentals shown is correct; that the Sublease is free from all liens and encumbrances and has been accepted by the Sublessee; the undersigned has complied with all its obligations with respect thereto; the Sublessee has the capacity to enter into said Sublease and that all signatures are genuine; that no event of default has occurred and is continuing; that no event has occurred which would constitute a default. The undersigned agrees that Locafrance may in its name endorse all remittances received, and gives express permission to Locafrance at its option to release, by operation of law or otherwise, or to compromise or adjust, any and all rights against the Sublease or any other persons obligated on the Sublease, without notice to it. The undersigned further agrees that it shall not sell, transfer, assign, pledge, mortgage or otherwise dispose of or encumber the Sublease or any of its rights as lessor thereunder, the property described therein or the proceeds thereof, or

SCHEDULE "H"

attempt to do any of the foregoing and that neither Locafrance or its assigns shall be bound by any such sale, transfer, assignment, pledge, mortgage or other disposition or encumbrance, or by any attempt to do any of the foregoing; it shall execute such documents and acknowledgements, including without limitation, financing and continuation statements under the Uniform Commercial Code as Locafrance shall require for filing or recording this Assignment in such places as Locafrance shall deem necessary or desirable and Locafrance is hereby authorized to file any such statements without the signature of the undersigned. The undersigned hereby constitutes and appoints Locafrance its true, lawful and irrevocable attorney to demand, receive, and enforce payments and to sue for all moneys payable to it under the Sublease, either in the name of the undersigned or the name of Locafrance with the same force and effect as if this assignment had not been made, the foregoing power of attorney being coupled with an interest. No act or omission of Locafrance shall affect any warranties or other obligations of the undersigned. The undersigned will not, without Locafrance's prior written consent, take any action with respect to its rights and remedies under the Sublease, or the property described therein, or consent to the termination or cancellation of, or modify the terms of the Sublease. The undersigned consents and agrees that Locafrance has the right to collect, receive, endorse, retain and use the rental payments as hereinafter provided. If any assigned moneys or the leased property be received by or returned to the undersigned, the same will be held by the undersigned as trustee for Locafrance and will immediately be delivered in kind to Locafrance without commingling. Locafrance's knowledge now or hereafter of any breach of any of the foregoing shall not constitute any waiver of any of the obligations of the undersigned.

The undersigned hereby indemnifies and holds Locafrance harmless from and against any and all claims, actions, causes of action, judgments, liabilities, loss, damage, costs or expenses of whatever kind or nature, including reasonable attorney's fees, which Locafrance may sustain or incur in connection with responding to or defending or enforcing any of the foregoing.

The undersigned represents and warrants that the Sublessee has been notified, and consented in writing, to make the rental payments due and to become due under the Sublease to Locafrance, who shall pay, apply and dispose of the rental payments actually received by it as follows:

a) Locafrance shall deduct from the aggregate amount of the rental payments actually received by it under the within Assignment and other similar assignments the amount of the rental payments due it from the undersigned under the Lease, and promptly remit to the undersigned the excess, if any.

b) In the event the undersigned is in default under the Agreement or the Lease, Locafrance shall have the right to retain and use as its own the entire amount of the rental payments actually received by it in reduction of the Indebtedness of the undersigned to Locafrance as defined in the Agreement or, if the same has been liquidated, in reduction of the obligation of the undersigned to Locafrance which will arise upon the occurrence of the default under the Lease.

The undersigned expressly acknowledges and consents that Locafrance may assign with or without notice any or all of

its rights, in whole or in part, in and to the Sublease, the property described therein, and/or this Assignment, and that all of Locafrance's rights shall inure to the benefit of Locafrance's successors and assigns.

This Assignment is deemed to have been consummated in New York and the parties agree to be governed by the Laws of the State of New York.

Dated_____19__

Intermodal Systems Leasing, Inc.

By_____

Attest:

Title_____

_____
Secretary

STATE OF NEW YORK)
) SS.:
COUNTY OF NEW YORK)

On the day of before me personally came to me known, who, being by me duly sworn, did depose and say that he is the of Intermodal Systems Leasing, Inc. the corporation described in, and which executed, the foregoing instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the board of directors of said corporation; and that he signed his name thereto by like order.

_____
Notary Public

To all to whom these Presents shall come or may Concern,

Greeting: *KNOW YE, That* Locafrance U.S. Corporation
919 Third Avenue, New York, New York

a corporation organized and existing under and by virtue of the laws of the State *of* Delaware, for good and valuable consideration received from

Intermodal Systems Leasing, Inc.

the receipt whereof is hereby acknowledged, has remise , released and forever discharged, and by these presents does for itself and its successors, rem release and forever discharge the said

Intermodal Systems Leasing, Inc.

heirs, executors and administrators, successors and assigns of and from all manner of actions, causes of action, suits, debts, dues, sums of money, accounts, reckoning, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, extents, executions, claims and demands whatsoever, in law, in admiralty, or in equity, which against

Intermodal Systems Leasing, Inc.

it ever had, now has or which it or its successors hereafter can, shall or may have for, upon or by reason of any matter, cause or thing whatsoever from the beginning of the world to the day of the date of these presents."

The effectiveness of this release is dependent upon an agreement dated the day of June, 1974 between Intermodal Systems Leasing, Inc. and Locafrance U.S. Corporation becoming effective in accordance with its terms. The terms, conditions, covenants and agreements contained in said agreement are specifically excluded from this release, as are the terms, conditions, covenants and agreements contained in Lease No. 057/82/000 ---/0 between Locafrance U.S. Corporation, lessor, and Intermodal Systems Leasing, Inc., lessee.

This release may not be changed orally.

In Witness Whereof, *the said* Locafrance U.S. Corporation *has caused its corporate seal to be hereunto affixed and these presents to be signed by its duly authorized officer on the day of* June *19* 74

(Corporate Seal) Locafrance U.S. Corporation

By.....

STATE OF New York *COUNTY OF* New York *ss.:*

On the day of June *19* 74 *before me personally came* *to me known, who, being by me duly sworn, did depose and say that he resides at No.*

that he is the *of* Locafrance U.S. Corporation *the corporation described in, and which executed, the foregoing instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the board of* Directors *of said corporation; and that he signed h name thereto by like order.*

SCHEDULE "I"

To all to whom these Presents shall come or may Concern,

Greeting: KNOW YE, That Intermodal Systems Leasing, Inc.
29 West 34 Street, New York, New York

a corporation organized and existing under and by virtue of the laws of the State of Delaware, for good and valuable consideration received from

Locafrance U.S. Corporation

the receipt and sufficiency whereof is hereby acknowledged, has remised, released and forever discharged, and by these presents does for itself and its successors, remise, release and forever discharge the said

Locafrance U.S. Corporation

heirs, executors and administrators, successors and assigns of and from all manner of actions, causes of action, suits, debts, dues, sums of money, accounts, reckoning, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, extents, executions, claims and demands whatsoever, in law, in admiralty, or in equity, which against

Locafrance U.S. Corporation

it ever had, now has or which it or its successors hereafter can, shall or may have for, upon or by reason of any matter, cause or thing whatsoever from the beginning of the world to the day of the date of these presents.

The effectiveness of this release is dependent upon an agreement dated the day of June, 1974 between Intermodal Systems Leasing, Inc. and Locafrance U.S. Corporation becoming effective in accordance with its terms. The terms, conditions, covenants and agreements contained in said agreement are specifically excluded from this release, as are the terms, conditions, covenants and agreements contained in Lease No. 057/82/000 ---/0 between Locafrance U.S. Corporation, lessor, and Intermodal Systems Leasing, Inc., lessee.

This release may not be changed orally.

In Witness Whereof, the said Intermodal Systems Leasing, Inc. has caused its corporate seal to be hereunto affixed and these presents to be signed by its duly authorized officer on the day of June 1974

(Corporate Seal) Intermodal Systems Leasing, Inc.

By .....

STATE OF New York COUNTY OF New York ss.:

On the day of June 1974 before me personally came to me known, who, being by me duly sworn, did depose and say that he resides at No.

that he is the of Intermodal Systems Leasing, Inc. the corporation described in, and which executed, the foregoing instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the board of Directors of said corporation; and that he signed h name thereto by like order.

SCHEDULE "I-1"

Dear_____:

This is to notify you that Locafrance U. S. Corporation is the owner of the forklift trucks and certain other equipment on your premises. Locafrance has sold the forklift trucks at your location to Atlas Lift Truck Rental & Sales, Inc. You are requested to turn over possession of these trucks to either Locafrance's or Atlas' representative upon demand. You are free to enter into any leasing arrangement with Atlas with respect to these trucks. Intermodal Systems Leasing, Inc. has no further right, title, or interest in these trucks.

Intermodal also has no furhter right, title or interest in any of the other equipment owned by Locafrance at your location. If Locafrance demands the possession of this equipment, you are to turn it over to Locafrance's representative. You are also free to enter into any leasing arrangement with Locafrance with respect to this equipment.

If you have any question, please call me.

Thank you.

Very truly yours,

SCHEDULE "J"

EXHIBIT B - AMENDMENT TO SETTLEMENT AGREEMENT DATED JUNE 28, 1974 (pp. 95a-103a)

AMENDMENT, dated as of June 28, 1974 to AGREEMENT, made as of the 18th day of June, 1974 by and between LOCAFRANCE U.S. CORPORATION, with a place of business at 919 Third Avenue, New York, New York 10022 ("Locafrance") and INTERMODAL SYSTEMS LEASING, INC., with a place of business at 29 West 34 Street, New York, New York 10001 ("ISLI").

1. Section 2 of the Agreement is hereby modified by deleting therefrom all reference to Section 10 of the Agreemen.. Except as so modified, Section 2 shall remain as set forth in the Agreement.

2. Section 3 of the Agreement is deleted in its entirety and the following is substituted in its place and stead as a new Section 3.

> "3. The action more particularly described in Recital "F" shall be dismissed by ISLI, with prejudice, and the parties agree (i) to execute such additional and further documents, and cause such of them as must be filed with the Court to effect the dismissal to be filed, and (ii) to consent to a decree of the Court, which decree shall be in the form annexed hereto, made part hereof and marked Schedule "K". The dismissal shall be without costs to any party as against the others."

3. Subsection 4.1 of the Agreement is deleted in its entirety and the following is substituted in its place and stead as a new Subsection 4.1.

> "4.1 ISLI's undertaking not to commence any action or any proceeding in any jurisdiction or in any forum, and not to take or cause to be taken any action or any proceeding to seek recovery from Atlas is conditional upon the mutual exchange between ISLI and Atlas by July 18, 1974 (or as such date may be extended as provided in Section 25 hereof) of releases in the form and substance as are annexed hereto as Schedules "L" and "L-1". Except as modified by this Subsection 4.1, ISLI's undertaking as set forth in the first sentence of Section 4 relating to obtaining possession of the Equipment and to the Atlas Order shall be effective upon this Agreement becoming effective."

4. Subsection 4.3 of the Agreement is deleted in its entirety and the following is substituted in its place and stead as a new Subsection 4.3.

> "4.3 As soon as may be practicable after ISLI and Atlas have exchanged their releases as provided for in Subsection 4.1 hereof, and Locafrance and Atlas have entered into a separate agreement for Atlas to return to Locafrance the ISLI Trucks (as defined in Section 9 hereof), Locafrance shall deliver to ISLI a letter to the effect that ISLI is entitled to receive from the persons, firms or corporations who were using Equipment under the Leases all rentals that were due and payable by such users up to and including March 11, 1974, or such earlier date that the user gave up possession of the Equipment. Except with respect to those persons, firms and corporations who become sublessees of the ISLI Trucks (as defined in Section 9 hereof) as permitted in the New ISLI Lease (as defined in Section 9 hereof), ISLI covenants and agrees that for the one hundred twenty (120) days next following the date of this Agreement, it shall not use such letter, or take any action with respect to such users other than to render invoices or statements in the ordinary course of business, in order to enforce collection of such rentals. Upon the expiration of such period, ISLI shall be released from the foregoing restriction."

5. Section 9 of the Agreement is deleted in its entirety and the following is substituted in its place and stead as a new Section 9.

> "9. Locafrance consents and agrees that it shall enter into a new lease agreement with ISLI substantially in the form and substance as annexed hereto as Schedule "E" (the "New ISLI Lease") whereby it will lease to ISLI a minimum of thirty (30) of the fork lift trucks which are at the locations set forth on Schedule "F" annexed hereto (the "ISLI Trucks"). The number of trucks at each location may vary from the numbers of trucks set forth on Schedule "F", and no trucks may be available at some locations. Therefore, ISLI agrees to accept as the "ISLI Trucks" the number of trucks at the particular locations, as specified on Schedule "F" wherever located, provided that there shall not be less than thirty (30) ISLI Trucks. Locafrance agrees to use its best efforts to deliver more than thirty (30) trucks, but the delivery of at least thirty (30) trucks as aforesaid shall satisfy Locafrance's legal obligation under this Agreement. The New ISLI Lease shall include, but not be limited to, the following terms and conditions:"

The Subsections under Section 9 of the Agreement shall not be affected by this Amendment.

6. Schedule "F" to the Agreement shall be amended by adding thereto the following three (3) Towmotor Forklift Trucks located at Smyrna, Georgia: 502S650045, 422S0568 and 462S661141.

7. Section 10 of the Agreement is deleted in its entirety so that there shall be no Section 10 of the Agreement.

8. Section 25 of the Agreement is deleted in its entirety and the following is substituted in its place and stead as a new Section 25.

> "25. This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and may not be modified, altered or amended, and no part hereof may be waived, unless the same be in writing signed by the parties hereto. This Agreement and the releases exchanged by Locafrance and ISLI, are contingent upon the execution of a separate agreement between Atlas and Locafrance for Atlas to return to Locafrance the ISLI Trucks. In the event Atlas and Locafrance have not so agreed on or before ~~July 18, 1974~~ Aug. 12, 1974, or such later date as Locafrance and ISLI may agree upon in writing, this Agreement, and the releases exchanged by Locafrance and ISLI, shall be null, void and of no force and effect."

9. The provision on the signature page immediately below the spaces for the signatures of Locafrance and ISLI, commencing with the words "By its signature below..." and concluding with a space for the signature of Atlas and a space for the date that Atlas affixed its signature, is hereby deleted in its entirety from the Agreement.

10. The execution of this Amendment by Locafrance and ISLI constitutes the written agreement of Locafrance and ISLI, as provided for in Section 25 of the Agreement before the same is modified by this Amendment, to extend the date set forth therein to ~~July 18, 1974~~ Aug. 12, 1974. Upon the execution of this Amendment, Section 25 of the Agreement shall be as set forth in this Amendment.

11. Except as modified by this Amendment, the Agreement between the parties shall remain unmodified and in full force and effect in accordance with its terms.

IN WITNESS WHEREOF, the parties have caused this Amendment to be executed as of the date first above written.

Locafrance U.S. Corporation

by _____ Jean VIDAL
Secretary Treasurer

Intermodal Systems Leasing, Inc.

by _____.

IN WITNESS WHEREOF, the parties have caused this Amendment to be executed as of the date first above written.

Locafrance U.S. Corporation

by_____

Intermodal Systems Leasing, Inc.

by_____

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

COUNTY DEPARTMENT CHANCERY DIVISION

(COUNTY) ~~(MUNICIPAL)~~ (DIVISION) ~~(XXXXXXXX)~~

INTERMODAL SYSTEMS LEASING, INC.

Plaintiff,

v.

ATLAS FORKLIFT TRUCK RENTAL and SALES, INC., and LOCAFRANCE U.S. CORPORATION,

Defendant.

NO. 74 CH 1972

ORDER

This matter having come on for hearing on the Motion of the Plaintiff for a temporary injunction, the Court having heard evidence and arguments of counsel, and being fully advised in the premises, and by agreement of the parties, finds that:

1. The Plaintiff, being the owner of 274 fork lift trucks located at various places in the United States, did sell the same to the defendant Locafrance U. S. Corporation, who in turn sold all said lift trucks excepting thirty-three located at Toledo, Ohio, St. Louis, Missouri, Oklahoma City, Oklahoma, Kansas City, Missouri, Cincinnatti, Ohio, Philadelphia, Pennsylvania, and Smyrna, Georgia, to the Defendant, Atlas Lift Truck Rentals & Sales, Inc.

2. Continuously since January 29, 1974, Atlas Lift Truck Rentals & Sales, Inc. has been and now is the owner and entitled to the possession of all of the aforementioned lift trucks excepting those thirty-three located at those places specified in the previous paragraph of this Order.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that this cause be and the same is hereby dismissed with prejudice and without costs.

APPROVED:

Attorneys for Plaintiff

Attorneys for Atlas Lift Truck Rentals & Sales, Inc.

Attorneys for Locafrance U.S. Corporation

Name: WILDMAN, HARROLD, ALLEN & DIXON

Attorney for Atlas Lift Truck Rentals & Sales, Inc.

Address One IBM Plaza

City Chicago, Illinois 60611

Telephone 222-0400

ENTER:

Judge ..... 19.....

MATTHEW J. DANAHER, CLERK OF THE CIRCUIT COURT OF COOK COUNTY

SCHEDULE "K"

GENERAL RELEASE

KNOW ALL MEN BY THESE PRESENTS, That we the undersigned, INTERMODAL SYSTEMS LEASING, INC., a corporation organized and existing under the laws of the State of _____, for and in consideration of the sum of TEN ($10.00) DOLLARS and other good and valuable considerations, this day to it paid by ATLAS LIFT TRUCK RENTALS & SALES, INC., an Illinois corporation, the sufficiency and the receipt of which are hereby acknowledged, have remised, released and forever discharged and, by these Presents, do, for its successors and assigns, remise, release and forever discharge the said ATLAS LIFT TRUCK RENTALS & SALES, INC., its successors and assigns, of and from all manner of actions, cause, and causes of action, suits, debts, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, controversies, agreements, promises, variances, trespasses, damages, judgments, executions, claims and demands, whatsoever, in law or in equity, and which it now has against ATLAS LIFT TRUCK RENTALS & SALES, INC. or ever had, or which its successors or assigns hereafter can, shall or may have, for, upon, or by reason of any matter, cause, or thing, whatsoever, on or at any time prior to the date of these Presents.

Done this _____ day of _____, 1974.

INTERMODAL SYSTEMS
LEASING, INC.

By_____
President

ATTEST:

_____
Secretary

SCHEDULE "L"

GENERAL RELEASE

KNOW ALL MEN BY THESE PRESENTS, That we the undersigned, INTERMODAL SYSTEMS LEASING, INC., a corporation organized and existing under the laws of the State of DELAWARE, for and in consideration of the sum of TEN ($10.00) DOLLARS and other good and valuable considerations, this day to it paid by ATLAS LIFT TRUCK RENTALS & SALES, INC., an Illinois corporation, the sufficiency and the receipt of which are hereby acknowledged, have remised, released and forever discharged and, by these Presents, do, for its successors and assigns, remise, release and forever discharge the said ATLAS LIFT TRUCK RENTALS & SALES, INC., its successors and assigns, of and from all manner of actions, cause, and causes of action, suits, debts, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, controversies, agreements, promises, variances, trespasses, damages, judgments, executions, claims and demands, whatsoever, in law or in equity, and which it now has against ATLAS LIFT TRUCK RENTALS & SALES, INC. or ever had, or which its successors or assigns hereafter can, shall or may have, for, upon, or by reason of any matter, cause, or thing, whatsoever, on or at any time prior to the date of these Presents.

Done this 7 day of August, 1974.

INTERMODAL SYSTEMS LEASING, INC.

By _____
Chairman ~~President~~

ATTEST:

_____
Secretary

SCHEDULE "L"

GENERAL RELEASE

KNOW ALL MEN BY THESE PRESENTS, That we the undersigned, ATLAS LIFT TRUCK RENTALS & SALES, INC., a corporation organized and existing under the laws of the State of Illinois, for and in consideration of the sum of TEN ($10.00) DOLLARS and other good and valuable considerations, this day to it paid by INTERMODAL SYSTEMS LEASING, INC., a corporation organized and existing under the laws of the State of _____, the sufficiency and the receipt of which are hereby acknowledged, have remised, released and forever discharged and, by these Presents, do, for its successors and assigns, remise, release and forever discharge the said INTERMODAL SYSTEMS LEASING, INC., its successors and assigns, of and from all manner of actions, cause, and causes of action, suits, debts, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, controversies, agreements, promises, variances, trespasses, damages, judgments, executions, claims and demands, whatsoever, in law or in equity, and which it now has against INTERMODAL SYSTEMS LEASING, INC. or ever had, or which its successors or assigns hereafter can, shall or may have, for, upon, or by reason of any matter, cause, or thing, whatsoever, on or at any time prior to the date of these Presents.

Done this _____ day of _____, 1974.

ATLAS LIFT TRUCK RENTALS
& SALES, INC.

By_____
President

ATTEST:

_____
Secretary

SCHEDULE "L-1"

B 111—General Release by Corporation.

JULIUS BLUMBERG INC. LAW BLANK PUBLISHERS
80 EXCHANGE PLACE AT BROADWAY, NEW YORK

To all to whom these Presents shall come or may Concern,

Greeting: *KNOW YE, That* Locafrance U.S. Corporation
919 Third Avenue, New York, New York

a corporation organized and existing under and by virtue of the laws of the State *of* Delaware, for good and valuable consideration received from

Intermodal Systems Leasing, Inc.

the receipt and sufficiency whereof is hereby acknowledged, has remised, released and forever discharged, and by these presents does for itself and its successors, remise, release and forever discharge the said

Intermodal Systems Leasing, Inc.

heirs, executors and administrators, successors and assigns of and from all manner of actions, causes of action, suits, debts, dues, sums of money, accounts, reckoning, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, extents, executions, claims and demands whatsoever, in law, in admiralty, or in equity, which against

Intermodal Systems Leasing, Inc.

it ever had, now has or which it or its successors hereafter can, shall or may have for, upon or by reason of any matter, cause or thing whatsoever from the beginning of the world to the day of the date of these presents.

The effectiveness of this release is dependent upon an agreement dated the 18 day of June, 1974 between Intermodal Systems Leasing, Inc. and Locafrance U.S. Corporation becoming effective in accordance with its terms. The terms, conditions, covenants and agreements contained in said agreement are specifically excluded from this release, as are the terms, conditions, covenants and agreements contained in Lease No. 057/82/000 ---/0 between Locafrance U.S. Corporation, lessor, and Intermodal Systems Leasing, Inc., lessee.

This release may not be changed orally.

In Witness Whereof, *the said* Locafrance U.S. Corporation *has caused its corporate seal to be hereunto affixed and these presents to be signed by its duly authorized officer on the* 18 *day of* June *19* 74

(Corporate Seal)

Locafrance U.S. Corporation

By [signature]

STATE OF New York **COUNTY OF** New York ss.:

On the 18 *day of* June *19* 74 *before me personally came* YVES GUERIN *to me known, who, being by me duly sworn, did depose and say that he resides at No.*

that he is the SEC'Y-TREAS *of* Locafrance U.S. Corporation *the corporation described in, and which executed, the foregoing instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the board of* Directors *of said corporation; and that he signed h name thereto by like order.*

[signature]

PETER A. SILVERSTEIN
NOTARY PUBLIC, STATE OF NEW YORK
No. 30-[illegible]6390
Qualified in Nassau County
Certificate filed in New York County
Commission Expires March 30, 19[illegible]

EXHIBIT D - MEMORANDUM OF T.J. BYRNES DATED MARCH 27, 1974
(pp. 105a-107a)

M E M O R A N D U M

TO: The File March 27, 1974

FROM: T. J. Byrnes

SUBJECT: Meeting with Paul Siege, Locafrance
Wednesday Morning, March 27, 1974
11:15 a.m.

On Tuesday afternoon Paul Siege asked me to come up to his office to discuss certain I.S.L.I. situations, since I had asked for an accounting on machines sold by Atlas. When I arrived at his office, Mr. Siege advised me that it was really quite academic what had been sold to Atlas. While they would give us an accounting as soon as they were prepared to do so, the point was that there were no machines available for I.S.L.I.

I asked him how this had tied in with the meeting that he had had with Charlie Carroll and Florence Cohen last week. He said that he had agreed to hold that meeting at Mr. Overmyer's request, but that after they came up there and showed what they had it was not apparent to him that I.S.L.I. had any firm marketing plan. For instance, he said they showed him a list of cities and said, for example, in Albany there would be six machines, and in Birmingham there might be five or three, whatever the number might be. The point was, they had no details as to who they would lease it to, for how much, and when they would get around to this.

His point was that I.S.L.I. did not have a marketing organization and did not have a marketing plan, it merely had some ideas. While he sympathized with this and would like to see it work, Locafrance could not go along with this type of thing.

He then went further to say that from here on in, they could not afford to have any interference with Atlas or anyone else picking up machines. That due to the release that Mr. Overmyer had signed, as well as the original financing contract with I.S.L.I., which was in default, these machines belonged to Locafrance and they would have to do whatever would seem necessary with these machines.

He said that they had been advised that a Mr. Stuart Strang acting for Mr. Overmyer, was advising public warehouse managers in the field that they should not do business with Atlas and that I.S.L.I. would either rent or sell these machines to the managers. He pointed out that I.S.L.I., at this moment, had no right to either lease or sell and had no right to offer to lease or sell since the machines were the property, in fact, of Locafrance. He also said that they had been advised that one or more machines had been sold on the west coast, per Mr. Overmyer's specific instructions, and that the company had no right to sell these machines.

At this time we were joined by Mr. Jean Vidal, who is the Secretary-Treasurer of Locafrance U.S. and is a representative of the French parent company in New York. He told me that they had been called by their Paris office that very morning and were told "to pull out all of the stops against I.S.L.I. and Overmyer". When I asked him what this meant, he said that their lawyers had prepared all of the necessary papers to take legal action against I.S.L.I. and the Overmyer group and would do the following:

1. Use local district attorneys to go after local managers who refuse to part with Locafrance equipment. They said they could do this since some time ago, local managers had taken an inventory of Locafrance equipment, affixed Locafrance stickers and signed some sort of inventory reports acknowledging that the property belonged to Locafrance. Therefore, to deny at this date was some sort of incorrect or even criminal act and that they could go to the district attorneys. They were proceeding to do so starting today with Geoff Manack in Columbus, and then they would go after the other branches.

2. They then intended to take legal action, probably in some sort of a fraud charge against Mr. Daniel Overmyer, against Thomas Byrnes, Ed Connery, Frank Lake, James Kirby, Gerry Carney, and any Overmyer officers or I.S.L.I. officers who had signed representation letters in the past, which they now felt there was ample evidence to prove had been fraudelent, in that these officers knew or should have known that the financial condition of the various companies was in jeopardy and signed documents to the contrary.

Paul Siege said that as far as he could see, I.S.L.I. had very little chance of survival, and that Locafrance had to protect its interests as creditor. He also said that many of the major creditors contacted Locafrance, and that Locafrance had been instrumental in holding them from taking any action against I.S.L.I. Because of this, he felt that Locafrance was now obligated to contact those creditors and tell them what actions they were going to take.

He said the actions against Mr. Overmyer and the other officers would commence in a day or so if we did not stop obstructing Atlas or Locafrance from obtaining their own machines, and that he was not goint to wait for us to do something, but had to have this stopped within a day.

He said that if Mr. Overmyer wanted to talk to him personally he would be glad to discuss the situation, but that everything said above would remain unchanged.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

LOCAFRANCE U.S. CORPORATION,

Plaintiff,

- against -

INTERMODAL SYSTEMS LEASING, INC., DANIEL H. OVERMYER, SHIRLEY OVERMYER, JOHN OVERMYER, ELIZABETH OVERMYER, EDWARD OVERMYER, BARBARA STRANG and "JOHN DOE", that name being fictitious, the true name of the defendant being unknown to plaintiff and the person intended being trustee f/t/b of defendants JOHN OVERMYER, ELIZABETH OVERMYER, EDWARD OVERMYER and BARBARA STRANG,

Defendants.

CIVIL ACTION
FILE NO. 76 Civ.2515

JUDGE BRIEANT

AFFIDAVIT OF DANIEL H. OVERMYER IN SUPPORT OF DEFENDANTS' MOTION TO DISMISS

STATE OF NEW YORK)
COUNTY OF NEW YORK) SS:

DANIEL H. OVERMYER, being duly sworn, deposes and says:

I am the father of defendants JOHN OVERMYER, EDWARD OVERMYER and ELIZABETH OVERMYER and I submit this affidavit in support of defendants' motion to dismiss.

Both defendants JOHN OVERMYER and EDWARD OVERMYER are minors. Defendant JOHN OVERMYER is 14 years of age and defendant EDWARD OVERMYER is 12 years of age. Defendants JOHN OVERMYER, and EDWARD OVERMYER are children of deponent and of defendant SHIRLEY OVERMYER and both reside with us at Hog Hill Road, Chappaqua, New York. Defendant ELIZABETH OVERMYER is a daughter of deponent and of defendant SHIRLEY OVERMYER but she resides outside the State of New York.

Despite the fact that defendants JOHN and EDWARD OVERMYER are minors residing with their parents in New York, no service was

made upon the parents, as is shown by the return of service, Exhibit A attached hereto.

As the father of the defendants, JOHN OVERMYER, EDWARD OVERMYER, and ELIZABETH OVERMYER, I am fully aware of the fact that none of them is a controlling person of Intermodal Systems Leasing, Inc. (hereinafter "ISLI"). Neither JOHN OVERMYER, EDWARD OVERMYER nor ELIZABETH OVERMYER owns or has ever owned any stock interest in ISLI, holds, or has ever held any office or position of employment with ISLI, is or was a party to any contract regarding ISLI, or has or had any actual or potential influence in the business affairs of ISLI

I make no statement herein regarding my daughter BARBARA STRANG, because the return of service shows she has not been served with process in this action.

/s/
DANIEL H. OVERMYER

Sworn to before me this
day of , 1976.

76 CIV 2515 37 38 (ST)

U.S. MARSHALS SERVICE
PROCESS AND PROCESS RECORD

INSTRUCTIONS: See "INSTRUCTIONS FOR SERVICE OF PROCESS BY THE U.S. MARSHAL" on the reverse of the last (No. 5) copy of this form. Please type or print legibly, insuring readability of all copies. Do not detach any copies.

PLAINTIFF: LOCAFRANCE U.S. CORP.
COURT NUMBER: 76 CIV. 2515 CLB
DEFENDANT: INTERMODAL SYSTEMS LEASING, INC. et al
TYPE OF WRIT: SUMMONS & COMPLAINT

SERVE: NAME OF INDIVIDUAL, COMPANY, CORPORATION, ETC., TO SERVE OR DESCRIPTION OF PROPERTY TO SEIZE OR CONDEMN
INTERMODAL SYSTEMS LEASING, INC.

AT: ADDRESS (Street or RFD, Apartment No., City, State and ZIP Code)
232 MADISON AVENUE, NEW YORK, NEW YORK

SEND NOTICE OF SERVICE COPY TO NAME AND ADDRESS BELOW:
Jan Atlas, Esq.
Regan Goldfarb Heller Uretzky & Cohen
445 Park Avenue
New York, New York 10022

FILED
AUG 12 1976
S. D. OF N.Y.

Number of process to be served with this Form 285: NO. 1
Number of parties to be served in this case: TOTAL 1
Check for service on U.S.A.: Only copy for U. S. Attorney or designee and two copies for Attorney General of the U. S. included.

SHOW IN THE SPACE BELOW AND TO THE LEFT ANY SPECIAL INSTRUCTIONS OR OTHER INFORMATION PERTINENT TO SERVING THE WRIT DESCRIBED ABOVE.

SPECIAL INSTRUCTIONS:
INTERMODAL IS LOCATED AT 232 MADISON AVENUE, N.Y.N.Y. ON THE SEVENTH FLOOR; MR. DAVID RAIBLE IS PRESIDENT I HAVE CALLED THAT OFFICE (889-5454) VERY OFTEN AND AM ADVISED THAT INTERMODAL DOES HAVE OFFICE THERE. PLEASE EXPEDITE SERVICE.

NAME AND SIGNATURE OF ATTORNEY OR OTHER ORIGINATOR: [signature]
TELEPHONE NUMBER: 754-3000
DATE: 7-15-76

SPACE BELOW FOR USE OF U.S. MARSHAL ONLY - DO NOT WRITE BELOW THIS LINE

Show amount of deposit (or applicable code) and sign USM-285 for first writ only if more than one writ submitted.
DEPOSIT/CODE:
DIST. OF ORIGIN: SDNY
DISTRICT TO SERVE: SDNY
LOCATION OF SUB-OFFICE OF DIST. TO SERVE:

I acknowledge receipt for the total number of writs indicated and for the deposit (if applicable) shown.
SIGNATURE OF AUTHORIZED USMS DEPUTY OR CLERK: B.C. Stanley
DATE: 7/16/76

☒ I hereby certify and return that I have personally served, have legal evidence of service, or have executed as shown in "REMARKS," the writ described on the individual, company, corporation, etc., at the address shown above or on the individual, company, corporation, etc., at the address inserted below.

☐ I hereby certify and return that, after diligent investigation, I am unable to locate the individual, company, corporation, etc., named above within this Judicial District.

NAME AND TITLE OF INDIVIDUAL SERVED (If not shown above): Jane Doe
☐ A person of suitable age and discretion then abiding in the defendant's usual place of abode.
ADDRESS (Complete only if different than shown above)
FEE (If applicable): $ 3 —
MILEAGE: $ .96

DATE(S) OF ENDEAVOR (Use Remarks if necessary)
DATE OF SERVICE: 7/21/76
TIME: 1:15 AM/PM
SIGNATURE OF U. S. MARSHAL OR DEPUTY: Richard Dilt

REMARKS:
7/21/76 Served Jane Doe. Female about 5'5" white hair [illegible]
[illegible] no one was in [illegible] return the writ [illegible] Served the person was to be [illegible] attempted the [illegible] address.

FILED
AUG 19 10 AM '76
U.S. DISTRICT COURT
S.D. OF N.Y.

PRIOR EDITIONS MAY BE USED

PLAINTIFF: LOCAFRANCE U.S. CORPORATION

DEFENDANT: INTERMODAL SYSTEMS LEASING, INC., et al

TYPE OF WRIT: SUMMONS & COMPLAINT

SERVE — NAME OF INDIVIDUAL, COMPANY, CORPORATION, ETC., TO SERVE OR DESCRIPTION OF PROPERTY TO SEIZE OR CONDEMN: EDWARD OVERMYER

AT — ADDRESS (Street or RFD, Apartment No., City, State and ZIP Code): HOG HILL ROAD, CHAPPAQUA, NEW YORK

SEND NOTICE OF SERVICE COPY TO NAME AND ADDRESS BELOW:

Jan Atlas Esq.
Rogan Goldfarb Keller Uhrlaub & Quinn
445 Park Avenue
New York, New York 10022

Show number of this writ and total number of writs submitted, i.e., 1 of 1, 1 of 3, etc.: NO. 4 OF 16

CHECK IF APPLICABLE:
☐ One copy for U. S. Attorney or designee and two copies for Attorney General of the U. S. included.

SHOW IN THE SPACE BELOW AND TO THE LEFT ANY SPECIAL INSTRUCTIONS OR OTHER INFORMATION PERTINENT TO SERVING THE WRIT DESCRIBED ABOVE.

SPECIAL INSTRUCTIONS:

NAME AND SIGNATURE OF ATTORNEY OR OTHER ORIGINATOR: Jan Atlas

TELEPHONE NUMBER: 754-3000

DATE: 6-4-76

SPACE BELOW FOR USE OF U.S. MARSHAL ONLY - DO NOT WRITE BELOW THIS LINE

Show amount of deposit (or applicable code) and sign USM-285 for first writ only if more than one writ submitted.

DEPOSIT/CODE | DIST. OF ORIGIN: 54 | DISTRICT TO SERVE: 56 | LOCATION OF SUB-OFFICE OF DIST. TO SERVE

I acknowledge receipt for the total number of writs indicated and for the deposit (if applicable) shown.

SIGNATURE OF AUTHORIZED USMS DEPUTY OR CLERK | DATE: 6/7/76

☒ I hereby certify and return that I have personally served, have legal evidence of service, or have executed as shown in "REMARKS," the writ described on the individual, company, corporation, etc., at the address shown above or on the individual, company, corporation, etc., at the address inserted below.

☐ I hereby certify and return that, after diligent investigation, I am unable to locate the individual, company, corporation, etc., named above within this Judicial District.

NAME AND TITLE OF INDIVIDUAL SERVED (If not shown above): PS

☐ A person of suitable age and discretion then abiding in the defendant's usual place of abode.

ADDRESS (Complete only if different than shown above)

FEE (If applicable): $ 50.

MILEAGE: $

DATE(S) OF ENDEAVOR (Use Remarks if necessary): 7/6

DATE OF SERVICE: 7-16-76 | TIME: AM PM

SIGNATURE OF U. S. MARSHAL OR DEPUTY

REMARKS: The address used was the house

UP-124-15

LOCAFRANCE U.S. CORPORATION

76 CIV 3575

DEFENDANT: INTERMODAL SYSTEMS LEASING, INC. et al

TYPE OF WRIT: SUMMONS & COMPLAINT

SERVE — NAME OF INDIVIDUAL, COMPANY, CORPORATION, ETC., TO SERVE OR DESCRIPTION OF PROPERTY TO SEIZE OR CONDEMN: DANIEL H. OVERMYER

AT — ADDRESS (Street or RFD, Apartment No., City, State and ZIP Code): HEGE HILL ROAD, CHAPPAQUA, NEW YORK

SEND NOTICE OF SERVICE COPY TO NAME AND ADDRESS BELOW:

Jan Atlas, Esq.
Regan Goldfarb Heller Gretzler & Quinn
445 Park Avenue
New York, New York 10022

Show number of this writ and total number of writs submitted, i.e., 1 of 1, 1 of 3, etc.: NO. 2 OF TOTAL 6

CHECK IF APPLICABLE:
☐ One copy for U. S. Attorney or designee and two copies for Attorney General of the U. S included.

SHOW IN THE SPACE BELOW AND TO THE LEFT ANY SPECIAL INSTRUCTIONS OR OTHER INFORMATION PERTINENT TO SERVING THE WRIT DESCRIBED ABOVE.

SPECIAL INSTRUCTIONS:

NAME AND SIGNATURE OF ATTORNEY OR OTHER ORIGINATOR: Jan Atlas

TELEPHONE NUMBER: 754-3000

DATE: 6-4-76

SPACE BELOW FOR USE OF U.S. MARSHAL ONLY - DO NOT WRITE BELOW THIS LINE

Show amount of deposit (if applicable writs) and sign USM-285 for first writ only if more than one writ submitted.

I acknowledge receipt for the total number of writs indicated and for the deposit (if applicable) shown.

DEPOSIT/CODE:

DIST. OF ORIGIN: 54

DISTRICT TO SERVE: 54

LOCATION OF SUB-OFFICE OF DIST. TO SERVE:

SIGNATURE OF AUTHORIZED USMS DEPUTY OR CLERK:

DATE: 6/7/76

☒ I hereby certify and return that I have personally served, have legal evidence of service, or have executed as shown in "REMARKS," the writ described on the individual, company, corporation, etc., at the address shown above or on the individual, company, corporation, etc., at the address inserted below.

☐ I hereby certify and return that, after diligent investigation, I am unable to locate the individual, company, corporation, etc., named above within this Judicial District.

NAME AND TITLE OF INDIVIDUAL SERVED (If not shown above): John Overmyer, son

☒ A person of suitable age and discretion then abiding in the defendant's usual place of abode.

ADDRESS (Complete only if different than shown above):

FEE (If applicable): $ 30-

MILEAGE: $ --

DATE(S) OF ENDEAVOR (Use Remarks if necessary):

DATE OF SERVICE: 7-16-76

TIME: AM PM

SIGNATURE OF U. S. MARSHAL OR DEPUTY: H Clarke

REMARKS: 7/16 called to your house 2nd

1P 124-13

U.S. MARSHALS SERVICE
INSTRUCTION AND PROCESS RECORD

INSTRUCTIONS: See "INSTRUCTIONS FOR SERVICE OF PROCESS BY THE U.S. MARSHAL" on the reverse of the last (No. 5) copy of this form. Please type or print legibly, insuring readability of all copies. Do not detach any copies.

PLAINTIFF: LOCAFRANCE U.S CORPORATION
COURT NUMBER: 76 CIV 2575
DEFENDANT: INTERMODAL SYSTEMS LEASING, INC., et al.
TYPE OF WRIT: SUMMONS & COMPLAINT

SERVE — NAME OF INDIVIDUAL, COMPANY, CORPORATION, ETC., TO SERVE OR DESCRIPTION OF PROPERTY TO SEIZE OR CONDEMN: SHIRLEY OVERMYER

AT — ADDRESS (Street or RFD, Apartment No., City, State and ZIP Code): HOG HILL ROAD, CHAPPAQUA, NEW YORK

SEND NOTICE OF SERVICE COPY TO NAME AND ADDRESS BELOW:

Jan Atlas, Esq.
Regan Goldfarb Heller Uretzky & Ruman
445 Park Avenue
New York, New York 10022

Show number of this writ and total number of writs submitted, i.e., 1 of 1, 1 of 3, etc.: NO. 3 OF TOTAL 16

CHECK IF APPLICABLE:
☐ One copy for U. S. Attorney or designee and two copies for Attorney General of the U. S. included.

SHOW IN THE SPACE BELOW AND TO THE LEFT ANY SPECIAL INSTRUCTIONS OR OTHER INFORMATION PERTINENT TO SERVING THE WRIT DESCRIBED ABOVE.

SPECIAL INSTRUCTIONS:

NAME AND SIGNATURE OF ATTORNEY OR OTHER ORIGINATOR: [signature] — TELEPHONE NUMBER: 754-3000 — DATE: 6-4-76

SPACE BELOW FOR USE OF U.S. MARSHAL ONLY - DO NOT WRITE BELOW THIS LINE

Show amount of deposit (or applicable code) and sign USM-285 for first writ only if more than one writ submitted. — DEPOSIT/CODE — DIST. OF ORIGIN: 54 — DISTRICT/TO SERVE: 56 — LOCATION OF SUB-OFFICE OF DIST TO SERVE

I acknowledge receipt for the total number of writs indicated and for the deposit (if applicable) shown. — SIGNATURE OF AUTHORIZED USMS DEPUTY OR CLERK — DATE: 6/7/76

☒ I hereby certify and return that I have personally served, have legal evidence of service, or have executed as shown in "REMARKS," the writ described on the individual, company, corporation, etc., at the address shown above or on the individual, company, corporation, etc., at the address inserted below.

☐ I hereby certify and return that, after diligent investigation, I am unable to locate the individual, company, corporation, etc., named above within this Judicial District.

NAME AND TITLE OF INDIVIDUAL SERVED (If not shown above): John Overmyer, Son

☒ A person of suitable age and discretion then abiding in the defendant's usual place of abode.

ADDRESS (Complete only if different than shown above):

FEE (If applicable): $ 3.00 — MILEAGE: $ 19.20

DATE(S) OF ENDEAVOR (Use Remarks if necessary): 7/4 — DATE OF SERVICE: 7-16-76 — TIME: AM / PM — SIGNATURE OF U. S. MARSHAL OR DEPUTY: [signature]

REMARKS: 7/4 no one home, called agency (960 EIU)

C.P. 12.4.14

USM-285 (Rev. 7-1-70) — 1 - CLERK OF THE COURT

PLAINTIFF: LOCATAIRE U.S. CORPORATION

DEFENDANT: INTERMODAL SYSTEMS LEASING, INC., et al.

TYPE OF WRIT: SUMMONS & COMPLAINT

SERVE: NAME OF INDIVIDUAL, COMPANY, CORPORATION, ETC., TO SERVE OR DESCRIPTION OF PROPERTY TO SEIZE OR CONDEMN

ELIZABETH OVERMYER

AT: ADDRESS (Street or RFD, Apartment No., City, State and ZIP Code)

HOG HILL ROAD, CHAPPAQUA, NEW YORK

SEND NOTICE OF SERVICE COPY TO NAME AND ADDRESS BELOW:

Jan Atlas Esq.
Regan Goldfarb Heller Uebler & Quinn
445 Park Avenue
New York, New York

Show number of this writ and total number of writs submitted, i.e., 1 of 1, 1 of 3, etc.: NO. 5 TOTAL OF 6

CHECK IF APPLICABLE:

☐ One copy for U. S. Attorney or designee and two copies for Attorney General of the U. S. included.

SHOW IN THE SPACE BELOW AND TO THE LEFT ANY SPECIAL INSTRUCTIONS OR OTHER INFORMATION PERTINENT TO SERVING THE WRIT DESCRIBED ABOVE.

SPECIAL INSTRUCTIONS:

NAME AND SIGNATURE OF ATTORNEY OR OTHER ORIGINATOR: Jan Atlas

TELEPHONE NUMBER: 754-3000

DATE: 6-4-76

SPACE BELOW FOR USE OF U.S. MARSHAL ONLY - DO NOT WRITE BELOW THIS LINE

Show amount of deposit (or applicable code) and sign USM-285 for first writ only if more than one writ submitted.

DEPOSIT/CODE | DIST. OF ORIGIN: 54 | DISTRICT TO SERVE: 56 | LOCATION OF SUB-OFFICE OF DIST. TO SERVE

I acknowledge receipt for the total number of writs indicated and for the deposit (if applicable) shown.

SIGNATURE OF AUTHORIZED USMS DEPUTY OR CLERK | DATE: 6/7/76

☒ I hereby certify and return that I have personally served, have legal evidence of service, or have executed as shown in "REMARKS," the writ described on the individual, company, corporation, etc., at the address shown above or on the individual, company, corporation, etc., at the address inserted below.

☐ I hereby certify and return that, after diligent investigation, I am unable to locate the individual, company, corporation, etc., named above within this Judicial District.

NAME AND TITLE OF INDIVIDUAL SERVED (If not shown above): John Overmyer trainer

☒ A person of suitable age and discretion then abiding in the defendant's usual place of abode.

ADDRESS (Complete only if different than shown above)

FEE (If applicable): $ 5.00 | MILEAGE: $ -

DATE(S) OF ENDEAVOR (Use Remarks if necessary) | DATE OF SERVICE: 7-16-76 | TIME: AM PM | SIGNATURE OF U. S. MARSHAL OR DEPUTY

REMARKS

Address good, more home(?)

UP-124-16

PLAINTIFF
LOCAFRANCE U.S. CORPORATION

DEFENDANT
INTERMODAL SYSTEMS LEASING, INC., et al.

TYPE OF WRIT
SUMMONS & COMPLAINT

SERVE
NAME OF INDIVIDUAL, COMPANY, CORPORATION, ETC., TO SERVE OR DESCRIPTION OF PROPERTY TO SEIZE OR CONDEMN
JOHN OVERMYER

AT
ADDRESS (Street or RFD, Apartment No., City, State and ZIP Code)
HOG HILL ROAD, CHAPPAQUA, NEW YORK

SEND NOTICE OF SERVICE COPY TO NAME AND ADDRESS BELOW:
Jan Atlas Esq
Regan Goldfarb Keller Uvetzler & Quinn
445 Park Avenue
New York, New York

Show number of this writ and total number of writs submitted, i.e., 1 of 1, 1 of 3, etc.
NO. 6 OF TOTAL 16

CHECK IF APPLICABLE:
☐ One copy for U. S. Attorney or designee and two copies for Attorney General of the U. S. included.

SHOW IN THE SPACE BELOW AND TO THE LEFT ANY SPECIAL INSTRUCTIONS OR OTHER INFORMATION PERTINENT TO SERVING THE WRIT DESCRIBED ABOVE.

SPECIAL INSTRUCTIONS:

NAME AND SIGNATURE OF ATTORNEY OR OTHER ORIGINATOR
Atlas

TELEPHONE NUMBER
754-3020

DATE
6-4-76

SPACE BELOW FOR USE OF U.S. MARSHAL ONLY - DO NOT WRITE BELOW THIS LINE

Show amount of deposit (or applicable code) and sign USM-285 for first writ only if more than one writ submitted.

DEPOSIT/CODE

DIST OF ORIGIN
S

DISTRICT TO SERVE
SD

LOCATION OF SUB-OFFICE OF DIST TO SERVE

I acknowledge receipt for the total number of writs indicated and for the deposit (if applicable) shown.

SIGNATURE OF AUTHORIZED USMS DEPUTY OR CLERK

DATE
6/7/76

☒ I hereby certify and return that I have personally served, have legal evidence of service, or have executed as shown in "REMARKS," the writ described on the individual, company, corporation, etc., at the address shown above or on the individual, company, corporation, etc., at the address inserted below.

☐ I hereby certify and return that, after diligent investigation, I am unable to locate the individual, company, corporation, etc., named above within this Judicial District.

NAME AND TITLE OF INDIVIDUAL SERVED (If not shown above)
P.S.

☐ A person of suitable age and discretion then abiding in the defendant's usual place of abode.

ADDRESS (Complete only if different than shown above)

FEE (If applicable)
$ 5.00

MILEAGE
$ —

DATE(S) OF ENDEAVOR (Use Remarks if necessary)
7/6

DATE OF SERVICE
7-6-76

TIME
AM
PM

SIGNATURE OF U. S. MARSHAL OR DEPUTY

REMARKS
7/6 address good, room 1010

UP-124-17

PLAINTIFF: LOCAFRANCE U.S. CORPORATION

DEFENDANT: INTERMODAL SYSTEMS LEASING, INC. | TYPE OF WRIT: SUMMONS & COMPLAINT

SERVE: NAME OF INDIVIDUAL, COMPANY, CORPORATION, ETC., TO SERVE OR DESCRIPTION OF PROPERTY TO SEIZE OR CONDEMN
INTERMODAL SYSTEMS LEASING, INC.

AT: ADDRESS (Street or RFD, Apartment No., City, State and ZIP Code)
201 East 42nd Street, New York, New York

SEND NOTICE OF SERVICE COPY TO NAME AND ADDRESS BELOW:

Jan Atlas Esq.
Regan Goldfarb Heller Uretzler & Quinn
445 Park Avenue
New York, New York 10022

Show number of this writ and total number of writs submitted, i.e., 1 of 1, 1 of 3, etc. — NO. 1 OF TOTAL 6

CHECK IF APPLICABLE:
☐ One copy for U. S. Attorney or designee and two copies for Attorney General of the U. S. included.

SHOW IN THE SPACE BELOW AND TO THE LEFT ANY SPECIAL INSTRUCTIONS OR OTHER INFORMATION PERTINENT TO SERVING THE WRIT DESCRIBED ABOVE.

SPECIAL INSTRUCTIONS:

NAME AND SIGNATURE OF ATTORNEY OR OTHER ORIGINATOR: Jan Atlas | TELEPHONE NUMBER: 754-3000 | DATE: 6-4-76

SPACE BELOW FOR USE OF U.S. MARSHAL ONLY - DO NOT WRITE BELOW THIS LINE

Show amount of deposit (or applicable code) and sign USM-285 for first writ only if more than one writ submitted. | DEPOSIT/CODE | DIST. OF ORIGIN: 54 | DISTRICT TO SERVE: 56 | LOCATION OF SUB-OFFICE OF DIST. TO SERVE

I acknowledge receipt for the total number of writs indicated and for the deposit (if applicable) shown. | SIGNATURE OF AUTHORIZED USMS DEPUTY OR CLERK: M Clark | DATE: 6/7/76

☐ I hereby certify and return that I have personally served, have legal evidence of service, or have executed as shown in "REMARKS," the writ described on the individual, company, corporation, etc., at the address shown above or on the individual, company, corporation, etc., at the address inserted below.

☒ I hereby certify and return that, after diligent investigation, I am unable to locate the individual, company, corporation, etc., named above within this Judicial District.

NAME AND TITLE OF INDIVIDUAL SERVED (If not shown above)

☐ A person of suitable age and discretion then abiding in the defendant's usual place of abode.

ADDRESS (Complete only if different than shown above)

FEE (If applicable): $ [redacted] | MILEAGE: $ .76

DATE(S) OF ENDEAVOR (Use Remarks if necessary) | DATE OF SERVICE | TIME AM PM | SIGNATURE OF U. S. MARSHAL OR DEPUTY

REMARKS:
Moved out no forwarding address
Zach - 6/9/76

E-212-49

PLAINTIFF: [illegible] CORP

DEFENDANT: INTERNATIONAL SYSTEMS LEASING, INC. et al

TYPE OF WRIT: SUMMONS & COMPLAINT

SERVE — NAME OF INDIVIDUAL, COMPANY, CORPORATION, ETC., TO SERVE OR DESCRIPTION OF PROPERTY TO SEIZE OR CONDEMN: INTERNATIONAL SYSTEMS LEASING INC.

AT — ADDRESS (Street or RFD, Apartment No., City, State and ZIP Code): 232 MADISON AVENUE, NEW YORK, NEW YORK

SEND NOTICE OF SERVICE COPY TO NAME AND ADDRESS BELOW:

Jan Atlas Esq
Regan Cuffaro Heller Quetzler & Quinn
425 Park Avenue,
New York, New York

Show number of this writ and total number of writs submitted, i.e., 1 of 1, 1 of 3, etc. — NO. 1 OF TOTAL 1 OF 6

CHECK IF APPLICABLE:
☐ One copy for U. S. Attorney or designee and two copies for Attorney General of the U. S. included.

SHOW IN THE SPACE BELOW AND TO THE LEFT ANY SPECIAL INSTRUCTIONS OR OTHER INFORMATION PERTINENT TO SERVING THE WRIT DESCRIBED ABOVE.

SPECIAL INSTRUCTIONS:

No

SIGNATURE AND SIGNATURE OF ATTORNEY OR OTHER ORIGINATOR: [signature] — TELEPHONE NUMBER: 754-3000 — DATE: 6-15-76

SPACE BELOW FOR USE OF U.S. MARSHAL ONLY - DO NOT WRITE BELOW THIS LINE

I acknowledge receipt for the total amount of deposit (if applicable) and sign USM-285 for first writ only if more than one writ submitted.

I acknowledge receipt for the total number of writs indicated and for the deposit (if applicable) shown.

DEPOSIT/CODE	DIST. OF ORIGIN	DISTRICT TO SERVE	LOCATION OF SUB-OFFICE OF DIST TO SERVE
	54	54	

SIGNATURE OF AUTHORIZED USMS DEPUTY OR CLERK: [signature] — DATE: 6/16/76

☐ I hereby certify and return that I have personally served, have legal evidence of service, or have executed as shown in "REMARKS," the writ described on the individual, company, corporation, etc., at the address shown above or on the individual, company, corporation, etc., at the address inserted below.

☐ I hereby certify and return that, after diligent investigation, I am unable to locate the individual, company, corporation, etc., named above within this Judicial District.

NAME AND TITLE OF INDIVIDUAL SERVED (If not shown above)

ADDRESS (Complete only if different than shown above)

☐ A person of suitable age and discretion then abiding in the defendant's usual place of abode.

DATE OF ENDEAVOR (Use Remarks if necessary)	DATE OF SERVICE	TIME	SIGNATURE OF U.S. MARSHAL OR DEPUTY	FEE (If applicable)	MILEAGE
6/16/76		AM PM		$	$ .96

REMARKS: THIS IS OFFICE OF D. [illegible] ... MR. COSWELL - COUNSEL TO ... [illegible] ... SAID HE WOULD ACCEPT ... [illegible] ... MAIL HERE - HAS NO OFFICE here. Will ... [illegible] ... E-215-111 ... Will accept

AFFIDAVIT OF HALLI PANKIN IN SUPPORT OF MOTION
UNITED STATES DISTRICT COURT (Dated September 7, 1976)
SOUTHERN DISTRICT OF NEW YORK (pp. 118a-119a)

LOCAFRANCE U.S. CORPORATION,

Plaintiff,

- against -

INTERMODAL SYSTEMS LEASING, INC., DANIEL H. OVERMYER, SHIRLEY OVERMYER, JOHN OVERMYER, ELIZABETH OVERMYER, EDWARD OVERMYER, BARBARA STRANG and "JOHN DOE", that name being fictitious, the true name of the defendant being unknown to plaintiff and the person intended being trustee f/t/b of defendants JOHN OVERMYER, ELIZABETH OVERMYER, EDWARD OVERMYER, and BARBARA STRANG,

Defendants.

CIVIL ACTION
FILE NO.76 Civ.2515

JUDGE BRIEANT

AFFIDAVIT OF HALLI PANKIN IN SUPPORT OF MOTION

STATE OF NEW YORK)
COUNTY OF NEW YORK) SS:

HALLI PANKIN, being duly sworn, deposes and says:

1. I am a secretary working at 232 Madison Avenue, New York, New York.

2. On July 21, 1976, during the early afternoon, a United States Marshall came, identified himself, and asked for David Raible, president of Intermodal Systems Leasing, Inc. However, Mr. Raible was out. The Marshall then asked for officers and directors of Intermodal Systems Leasing, Inc., but no one was in at the time. Then the Marshall asked my name and I told him. The Marshall put the complaint on my desk, and left.

3. I am not an officer, managing or general agent, or an agent authorized by appointment or by law to receive service of process on behalf of Intermodal Systems Leasing, Inc.

HALLI PANKIN

Sworn to before me
this day of September, 1976.

AFFIDAVIT OF PERSONAL SERVICE

STATE OF NEW YORK, COUNTY OF NEW YORK SS:

BRUCE W. HESSELBACH, being duly sworn, deposes and says that deponent is not a party to the action, is over 18 years of age and resides at Queens, New York.

That on September 7, 1976, deponent served the within plaintiff by personally delivering a true copy of the Motion to dismiss and affidavits to its attorneys at the address designated by said attorneys for that purpose. Deponent knew the attorneys so served to be the attorneys mentioned and described in said papers as the attorneys for plaintiff therein.

/s/

Bruce W. Hesselbach

Sworn to before me this
7th day of September, 1976.

DEFENDANTS MEMORANDUM OF LAW IN SUPPORT OF MOTION TO DISMISS (Filed October 13, 1976)
(pp. 120a-150a)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

LOCAFRANCE U.S. CORPORATION,

Plaintiff,

- against -

INTERMODAL SYSTEMS LEASING, INC., DANIEL H. OVERMYER, SHIRLEY OVERMYER, JOHN OVERMYER, ELIZABETH OVERMYER, EDWARD OVERMYER, BARBARA STRANG, and "JOHN DOE", that name being fictitious, the true name of the defendant being unknown to plaintiff and the person intended being trustee f/t/b of defendants JOHN OVERMYER, ELIZABETH OVERMYER, EDWARD OVERMYER and BARBARA STRANG,

Defendants.

CIVIL ACTION
FILE NO.76 Civ. 2515

JUDGE BRIEANT

MEMORANDUM OF LAW IN SUPPORT OF MOTION TO DISMISS

STATEMENT

This memorandum is respectfully submitted in support of the motion to dismiss.

FACTS

Plaintiff LOCAFRANCE U.S. CORPORATION (hereinafter called "LOCAFRANCE") and defendant INTERMODAL SYSTEMS LEASING, INC., (hereinafter called "ISLI") entered into contracts in 1972 and 1973 whereby LOCAFRANCE would buy 266 forklift trucks from ISLI, LOCAFRANCE would lease the trucks to ISLI, and ISLI would have an option to purchase the trucks for a nominal sum at the end of the lease period. Thus, ISLI would obtain capital while retaining actual possession of the forklift trucks. LOCAFRANCE received the right to payments pursuant to the lease, and further received the right to repossess the trucks.

Subsequenty, disputes arose between the parties. On April 4, 1974, ISLI brought suit against LOCAFRANCE in the state court of Illinois. Negotiations between the parties eventually culminated in a settlement. ISLI was given the right to retain 33 of the trucks under a new lease while LOCAFRANCE was given the right to repossess the remainder. Pursuant to this settlement, LOCAFRANCE executed a release on June 18, 1974,and a lease agreement for the 33 forklift trucks was executed on or about August 15, 1974.

In the present action, LOCAFRANCE has joined not only

ISLI but also various named individuals, infants, and fictitious persons, and alleges inter alia fraud under the federal securities laws. However, plaintiff concedes that the most recent sale leaseback agreement was executed on June 21, 1973. In addition, plaintiff must have known about the alleged fraud by November, 1973, when various companies mentioned by plaintiff went into Chapter XI bankruptcy proceedings.

POINT I

THE CLAIM ON THE PLAINTIFF IS BARRED BY AN ACCORD AND SATISFACTION.

The affidavit of David Raible in support of the defendants' motion to dismiss, and the exhibits attached thereto, demonstrate that the sale leaseback agreements herein gave rise to an action in the Courts of the State of Illinois. Since this dispute has been settled by the parties to the agreements, plaintiff's attempt to relitigate the same controversy violates the accepted principle that an accord and satisfaction operates as a final bar to the claim. Rhode Island v. Massachusetts 14 Pet (US) 210,10 LEd 423(1840); Hibbs v. First Nat. Bank 133 Va 94,112 SE 669, 25 ALR 120 (1922); Heiland v. Grunbaum 171 Wash 148,17 P 2d 864 (1933); Restatement, CONTRACTS §§417-419.

Moreover, it is settled under the law of Illinois that the release of one joint tortfeasor will operate as a release of all other joint tortfeasors unless the injured party has expressly reserved his right to sue. Sears, Sucsy & Co. v.I.N.A. 396 F.Supp. 820(DC ND ILL., 1975); Anderson v. Martzke 131 Ill. App 2d 61,206 NE 2d 137 (1970);

Putnam v. Continental Air Transp. Co. 297 F 2d 501 (7th Cir. 1961); Wallner v. Chicago Consol. Traction Co. 245 Ill. 148, 91 NE 1053, (1910). Here, plaintifff did not reserve his rights to sue parties other than ISLI; and consequently plaintiff's suit is barred.

In Wojcinski v. Foley 226 F. Supp. 157 (DC ND NY, 1963) aff 327 F 2d 665, the Court observed that "summary judgment may be granted on a defendant's motion where a valid affirmative defense is shown to exist". Here, where the settlement agreement and release are before the Court, dismissal of the complaint is appropriate.

POINT II

PLAINTIFF'S FIRST CAUSE OF ACTION IS BARRED BY THE STATUTE OF LIMITATIONS.

Plaintiff's first cause of action is founded upon Section 12(2) of the Securities Act of 1933 (15 USC §77 l). Accordingly, plaintiff is subject to the requirement of Section 13 of the Securities Act of 1933 (15 USC §77 m), which provides:

> No action shall be maintained to enforce any liability created under section 11 or section 12(2) unless brought within one year after the discovery of the untrue statement or the omission, or after such discovery should have been made by the exercise of reasonable diligence, or, if the action is to enforce a liability created under section 12(i), unless brought within one year after the violation upon which it is based. In no event shall any such action be brought to enforce a liability created under section 11 or section 12(1) more than three years after the security was bona fide offered to the public, or under section 12(2) more than three years after the sale.

On the face of the complaint, plaintiff admits that the sale leaseback contracts were executed on May 31, 1972, December 7, 1972, June 21, 1973, and August 15, 1974. It is inescapable, therefore, that plaintiff cannot maintain an action for the first three contracts. The earliest date

at which service on any of the defendants herein was even attempted is July 21, 1976, as appears in the return of service. Since the quoted statute of limitations completely bars all actions "under section 12(2) more than three years after the sale", it follows that any sales made earlier than July 21, 1973 are barred. The contracts of May 21, 1972, December 7, 1972, and June 21, 1973 were all made before July 21, 1973, and suit thereon is accordingly barred.

The only other alleged sale leaseback contract was executed on August 15, 1974. This would seem to avoid the statute of limitations problem. However, plaintiff omits to state that the August 15, 1974, contract was executed as an accord and satisfaction after protracted litigation.

By the time the August 15, 1974 contract was executed, Locafrance had already contemplated a lawsuit based upon the allegedly fraudulent misrepresentations cited in the complaint. A memorandum of T.J.Byrnes, former president of ISLI, reveals that representatives of Locafrance were threatening the defendants herein with a lawsuit for fraud as early as March 27, 1974. Consequently, the discovery of the allegedly untrue statement must have occurred before

March 27, 1974. Since the statute provides that "[n]o action shall be maintained to enforce any liability created under . . . section 12(2) unless brought with one year after the discovery of the untrue statement," plaintiff's cause of action under Section 12(2) is barred.

Moreover, the representations noted in the complaint all admittedly occurred on or before September 1973. (See complaint, pages 5 and 6). Thus, the alleged misrepresentations had all been made, discovered, and litigated prior to the execution of the settlement agreement of August 15, 1974.

Plaintiff therefore cannot maintain an action on the August 15, 1974, settlement agreement because the discovery of the allegedly untrue statements occurred more than one year before the present action was commenced, and indeed even before the August 15, 1974, settlement was reached. Further, plaintiff cannot maintain a 12(2) action on the agreements of May 31, 1972, December 7, 1972, and June 21, 1973, since the action is barred by Section 13 of the Securities Act of 1933 (15 USC §77 m). Accordingly, plaintiff's first cause of action should be dismissed.

POINT III

PLAINTIFF'S SIXTH CAUSE OF ACTION IS BARRED BY THE STATUTE OF LIMITATIONS.

Plaintiff's sixth cause of action alleges that defendants "ISLI and OVERMYER negligently and carelessly failed and refused to perform" a duty of disclosure. (Complaint, p. 11) Since the claim is founded upon negligence, it is governed by C.P.L.R. §214, which requires that the action be brought within three years. Plaintiff cannot claim the benefit of the longer statute of limitations for actions upon a contract. As the court held in Tischler Roofing & Sheet Metal Works Co. v. Sicolo Garage Inc. 64 Misc. 2d 825, 316 N.Y.S. 2d 453 (App. Term, 1 Dep., 1970), "If the gravamen of the cause of action is predicated on a tort, the three-year negligence statute controls..."

Here, plaintiff admits that the alleged duty to disclose on the part of ISLI arose "at the time it sold or offered to sell the said sale leaseback arrangements..." (Complaint, p.11) The last sale took place on June 21, 1973 (Complaint, para. 13 at p. 4), whereas the present

action was not commenced before July 21, 1976. Consequently, plaintiff's sixth cause of action is barred.

POINT IV

THE COMPLAINT FAILS TO ALLEGE THE USE OF THE MAILS OR INSTRUMENTALITIES OF INTERSTATE COMMERCE.

It is well settled that use of the mails or instrumentalities of interstate commerce must be shown in order to support subject matter jurisdiction over an alleged violation of the securities laws. See Franklin Savings Bank v. Levy 406 Fed. Supp. 40 (DC SD NY, 1975); Welch Foods, Inc. v. Goldman, Sachs & Co. 398 Fed. Supp. 1393 (DC SD NY, 1974). Cf U.S. v. Cashin 281 F 2d 669 at 672,673 (2d Cir., 1960). Here, plaintiff has alleged violations of §12(2) and §17 of the Securities Act of 1933 and §10 of the Securities Exchange Act of 1934. In these sections, the use of the mails, instrumentalities of interstate commerce, or facilities of a national securities exchange is fundamental.

> "Offers or sells a security . . . by the use of any means or instruments of transportation or communication in interstate commerce or of the mails. . . " Sec 12(2)

> "It shall be unlawful for any person in the offer or sale of any securities by the use of any means or instruments of transporation or communication in interstate commerce or by the use of the mails . . . " Sec 17.

> "It shall be unlawful for any person, directly or indirectly, by the use of any means or instrumentality of interstate commerce or of the mails . . ." Sec 10

Despite the importance of this jurisdictional prerequisite, the complaint discloses nothing more than the bald, conclusory allegations of "the use of means or instruments of transportation or communication in interstate commerce or or the mails . . . " (Complaint at paragraphs 25,29, and 33). There are no allegations as to whether the alleged fraudulent misrepresentations were made in person,by telephone, in the United States, or in Europe. To allow plaintiff to proceed with this claim in federal court, without the barest minimum of a factual allegation concerning the use of the mails or instrumentalities of interstate commerce, would violate the intent of the act and raise serious constitutional questions.

In the recent case of Fischer v. New York Stock Exchange 408 Fed. Supp. 745 (DC SD NY, 1976), Judge Lasker aptly summarized the law on this point.

> The lenders have entirely failed to allege the requisite connection between the unlawful activity and means or instrumentality of interstate commerce which is a basic jurisdictional ingredient of all federal securities

claims. In view of the exceedingly broad interpretation of this requirement, see Heyman v. Heyman, 356 F. Supp. 958,969 (S.D.N.Y. 1973), it is highly unlikely that such connection is actually lacking in this case, and we have, of course, proceeded on the assumption that the defect can be cured. Nevertheless, neither speculation by the court nor casual references by the lenders to the affidavits and exhibits on this motion (See Brief in Opposition at 14) can substitute for a vital jurisdictional allegation which is missing from the pleadings. Accordingly, if the lenders fail to file an amended complaint which remedies this deficiency within twenty days of the entry of this order, the complaint will be dismissed.

In the instant case, plaintiff has set forth a number of alleged misrepresentations. Should it appear that none of these statements has any connection with the use of the mails or instrumentalities of interstate commerce, the federal courts would not possess subject matter jurisdiction over plaintiff's claim. Therefore, plaintiff ought to be required to allege a factual basis upon which subject matter jurisdiction can be predicated.

POINT V

PLAINTIFF'S "JOHN DOE" COMPLAINT IS NEITHER AUTHORIZED NOR PERMITTED UNDER FEDERAL PRACTICE.

Plaintiff's overreaching appears in the very caption of its complaint whereby plaintiff conducts a fishing expedition into unnamed "John Doe" trusts. Not content with breaching its releases and with re-litigating stale controversies, plaintiff further insists upon joining unnamed parties.

Fortunately, a federal court need not allow the plaintiff to turn its pleadings into a three ring circus of potential defendants; the court has the power to dismiss fictitious defendants sua sponte. As was stated in Sigurdson v. Del Guercio 241 F 2d 480,482 (9th Cir., 1956):

> These John Doe complaints are dangerous at any time. It is inviting disaster to allow them to be filed and to allow fictitious persons to remain defendants if the complaint is still of record. Appropriate action [dismissal] has been taken by the trial court on its own motion in some such cases. Although . . . the Rules of Civil Procedure, 28 USCA, contain no express prohibition upon the subject, there is no authority of which we are aware for the joining of fictitious defendants in an action under a federal statute. These defendants should have been eliminated by motion. . .

Two federal rules deal with the incorrect naming of

parties, FRCP 15 and 17. In Rule 15, it is provided that an amendment changing the name of a party may be made after the statute of limitations has run only if certain conditions are met. However, Rule 15 does not authorize an amendment from a "John Doe" defendant to a non-fictitious defendant. Craig v. United States 413 F 2d 854 (9th Cir 1969) cert den 396 U.S. 987.

Rule 17 requires that an action be prosecuted in the name of the real party in interest. Before dismissal is warranted under Rule 17, however, a reasonable time for the ratification by, or joinder or substitution of, the real party in interest must elapse. This provision has been interpreted in comments by the Advisory Committee as follows:

> The provision should not be misunderstood or distorted. It is intended to prevent forfeiture when determination of the proper party to sue is difficult or when an understandable mistake has been made. It does not mean, for example, that, following an airplane crash in which all aboard were killed, an action may be filed in the name of John Doe (a fictitious person), as personal representative of Richard Roe (another fictitious person), in the hope that at a later time the attorney filing the action may substitute the real name of the real personal representative of a real victim, and have the benefit of suspension of the limitation period.

In the case of National Nut Co. v. Kelling Nut Co. 61 F. Supp. 76 (DC ND Ill, 1945), the court held that the

complaint would be dismissed against three unnamed defendants. The court emphasized the fact that the naming of fictitious defendants may not be used as an excuse for want of personal service. Moreover, the court stated that "the naming of these fictitious defendants will not be binding or conclusive on any actual persons who are not named defendants herein in their own proper name."

Since the Federal Rules of Civil Procedure neither authorize nor permit a "john Doe" complaint, and since complaints of this nature lend themselves to abuse, the courts have consistently ordered "John Doe" complaints to be dismissed. Telefree v. Ritz 382 F 2d 566 (9th Cir., 1967); Craig v. United States 413 F 2d 854 (9th Cir., 1969) cert den 396 U.S. 987; Sigurdson v. Del Guercio 241 F 2d 480 (9th Cir. 1956); National Nut Co. v. Kelling Nut Co. 61 F Supp. 76 CDC ND Ill, 1945. Cf. Wilder v. Doe 30 F Supp 869 aff (DC, ED Pa, 1939) aff 109 F 2d 1023 (CA 3, 1940); Mississippi Valley Barge Line Co. v. Bulk Carriers, Ltd.,249 F Supp. (DC SD N.Y., 1965).

POINT VI

THE INFANT DEFENDANTS HAVE NOT BEEN PROPERLY SERVED WITH PROCESS.

The Federal Rules provide that service upon an infant shall be made "in the manner prescribed by the law of the state in which the service is made . . ." F.R.C.P. 4. Accordingly, it is necessary to refer to New York law.

> Personal service upon an infant shall be made by personally serving the summons within the state upon a parent or any guardian or any person having legal custody or, if the infant is married, upon an adult spouse with whom the infant resides, or, if none are within the state, upon any other person with whom he resides, or by whom he is employed. If the infant is of the age of fourteen years or over, the summons shall also be personally served upon him within the state.... CPLR §309

As the affidavit of Daniel H. Overmyer indicates, defendants JOHN OVERMYER and EDWARD OVERMYER are infants residing with their parents, Daniel H. Overmyer and Shirley Overmyer, within New York State. Consequently, service upon defendants JOHN OVERMYER and EDWARD OVERMYER can only be made by personally serving either Daniel H. Overmyer or Shirley Overmyer.

An examination of the return of service made herein discloses that no service was made upon either Daniel H. Overmyer

or Shirley Overmyer. Hence the infant defendants have not been properly served with process.

POINT VII

DEFENDANT ELIZABETH OVERMYER HAS NOT BEEN PROPERLY SERVED WITH PROCESS.

Federal Rule of Civil Procedure 4(d)(1) provides that service shall be made upon

> an individual other than an infant or an incompetent person, by delivering a copy of the summons and of the complaint to him personally or by leaving copies thereof at his dwelling house or usual place of abode with some person of suitable age and discretion then residing therein or by delivering a copy of the summons and of the complaint to an agent authorized by appointment or by law to receive service of process. [Emphasis added.]

As the affidavit of DANIEL H.OVERMYER indicates, defendant ELIZABETH OVERMYER does not reside in New York State. Consequently, the purported service upon ELIZABETH OVERMYER at Chappaqua, New York, is invalid.

POINT VIII

DEFENDANT ISLI HAS NOT BEEN PROPERLY SERVED WITH PROCESS

Federal Rule of Civil Procedure 4(d)(3) provides that service shall be made upon

> . . . a domestic or foreign corporation or upon a partnership or other unincorporated association which is subject to suit under a common name, by delivering a copy of the summons and of the complaint to an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process and, if the agent is one authorized by statute to receive service and the statute so requires, by also mailing a copy to the defendant.

As the affidavit of HALLI PANKIN indicates, service was not made upon an officer, managing or general agent, or agent authorized by appointment or by law to receive service of process on behalf of ISLI. Consequently, ISLI has not been properly served with process.

POINT IX

THE COMPLAINT FAILS TO COMPLY WITH F.R.C.P. 9(b)

Federal Rule of Civil Procedure 9(b) states a simple requirement. "In all averments of fraud or mistake, the circumstances constituting fraud or mistake shall be stated with particularity." The rule is grounded in the strong policy of the law to avoid surprise and injustice. Robertson v. National Basketball Ass'n 67 FRD 691 (D.C. N.Y. 1975).

The gravamen of plaintiff's complaint is fraud involving the use of the mails or of instrumentalities of interstate commerce. Nonetheless, plaintiff's factual allegations are meager and vague. (Complaint at paragraph 19). While plaintiff does provide a list of alleged misrepresentations, plaintiff does not sufficiently identify these misrepresentations so as to enable the defendants to frame an answer. As was stated in Shemtob v. Shearson, Hammill & Co. 448 F2d, 442 (2d Cir., 1971), "mere conclusory allegations to the effect that defendant's conduct was fraudulent or in violation of Rule 10-b-5 are insufficient."

An example illustrates the difficulties engendered by plaintiff's vague allegations. At paragraph 19(6) of the

complaint, plaintiff alleges: "In or about June, 1973, OVERMYER stated that he owned a series of television stations." Plaintiff does not state whether this representation was written or oral. If the plaintiff had indicated a particular document, meeting, or conversation, the defendants would be in a position to explain the alleged representation, to admit the representation occurred as plaintiff alleges, or to deny that it ever occurred. The representation needs to be put in context in order to determine whether the alleged ownership of television stations is in whole or in part, directly or indirectly, or whether the representation was true, untrue, or an honest mistake.

Defendants respectfully submit that the allegations of the complaint regarding fraud are so vague that the defendants cannot frame a response. The complaint does not state the circumstances constituting fraud with particularity, and therefore ought to be dismissed for violation of F.R.C.P. 9(b).

POINT X

THE CLAIM OF THE PLAINTIFF IS BARRED BY LACHES.

Traditionally, laches has been found where a claimant neglects to assert a right and the lapse of time and other circumstances cause prejudice to the adverse party. Hansen v. Slick 216 F. 164, 172 (DC WD Pa, 1914); Bankers Federal Savings and Loan Assn v. Rudd 264 App. Div. 739, 34 N.Y.S. 2d 434 (2d Dep, 1942). The elements of laches, present in the case at bar, warrant dismissal of plaintiff's claim.

Here, the plaintiff knew about the alleged fraud at least as early as March, 1974, but failed to take any action to assert its claim against the defendants herein, other than its defense in the Illinois action brought by ISLI. Moreover, the plaintiff relies upon alleged representations as remote as 1972, and, indeed, refers to a financial statement as remote as 1968. It cannot be doubted that the defendants will be hard put to uncover all the relevant details of the conversations or negotiations that took place some four years ago. Similarly, it will be more

difficult to locate and to identify documents, correspondence, and memoranda bearing upon the plaintiff's claim.

Under federal procedure, it is clear that the affirmative defense of laches may be resolved in a motion for summary judgment. GAF Corporation v. Amchem Products, Inc. 399 F Supp 647 (DC ED Pa, 1975). Indeed it has been held that the "question of laches is uniquely one for summary judgment..." Walker v. McCollough 257 F Supp 560 (DC ED Pa, 1966).

A holding that this present action is barred by laches strengthens the principle that a party may not neglect to assert its rights to the prejudice of an adverse party. The application of the equitable doctrine of laches by dismissal of the complaint will set a desirable procedent and will help to assure the timely and just disposition of controversies.

POINT XI

PENDENT JURISDICTION SHOULD NOT BE EXERCISED OVER PLAINTIFF'S FOURTH, FIFTH AND SIXTH CAUSES OF ACTION.

It is axiomatic that the exercise of pendent jurisdiction is discretionary with the Court. In the case at bar, it is submitted that pendent jurisdiction should not be exercised over plaintiff's fourth, fifth and sixth causes of action, which are based upon the New York General Business Law, on common law fraud, and on negligence. Since the instant controversy has not yet proceeded to the discovery stage, plaintiff could conveniently litigate these issues in state court.

As the Supreme Court had occasion to declare in the landmark case of United Mine Workers v. Gibbs 383 U.S. 715, 86 S.Ct. 1130, 16 LEd 2d 218 (1966), "It has consistently been recognized that pendent jurisdiction is a doctrine of discretion, not of plaintiff's right . . . Needless decisions of state law should be avoided both as a matter of comity and to promote justice between the parties . . . " At the present time, while the proceedings herein are at a

preliminary stage, the principle of comity would be well served by the exercise of the wise discretion of the Court to dismiss plaintiff's fourth, fifth and sixth causes of action.

POINT XII

PLAINTIFF SHOULD POST SECURITY FOR COSTS UNDER §11(e) OF THE SECURITIES ACT OF 1933.

Security for costs may be required under the following provision of §11(e) of the Securities Act of 1933 (15 USCA §77k(e)):

> In any suit under this or any other section of this subchapter the court may, in its discretion, require an undertaking for the payment of the costs of such suit, including reasonable attorney's fees, and if judgment shall be rendered against a party litigant, upon the motion of the other party litigant, such costs may be assessed in favor of such party litigant (whether or not such undertaking has been required) if the court believes the suit or the defense to have been without merit, in an amount sufficient to reimburse him for the reasonable expenses incurred by him, in connection with such suit, such costs to be taxed in the manner usually provided for taxing of costs in the court in which the suit was heard.

In addition, Rule 2 of the Civil Rules for the Southern District of New York authorized the court to require "any party to file an original bond for costs or additional security for cost in such amount and so conditioned as it may designate."

Several factors present in the instant case suggest the wisdom of requiring the plaintiff to post security for

costs. First and foremost, the plaintiff brings this action in violation of an accord and satisfaction. Since plaintiff has given ISLI a release regarding the sale lease-back agreements executed between them, since the release recites that it is given for good and valuable consideration, and since it is an established principle that a plaintiff cannot be allowed a double recovery, there is no basis whatever for the present action. In addition, there can be no doubt that the present action, if allowed to go forward, will require the parties to expend large sums of money for legal fees. Moreover, the fact that the plaintiff delayed bringing his action until some four years after the transactions in question will substantially increase the investigatory expenses of the defendants. The plaintiff has joined a large number of defendants who have no connection with the present controversy. These defendants will now have to be fully and competently represented, although in fact they are joined solely to oppress and harass the defendants. In circumstances such as these, the case law indicates that security for costs is warranted. See Dubney v Alleghany Corp.164 F. Supp.28 (DC SD NY, 1958);

Leighton v. Paramount Pictures Corp. 340 F. 2d 859 (2nd Cir. 1965), cert den. 381 U.S. 925; Klein v. Spear, Leeds, & Kellogg, 306 F. Supp. 743, (DC NY, 1969).

As the affidavit of David Raible indicates, ISLI incurred approximately $50,000.00 in legal fees in the action in Illinois. Those expenses must be considered in light of the fact that the Illinois action involved a lesser number of parties, took place at a time when records and witnesses were more readily available, and was settled after a few months. In the present action, defendant ISLI alone estimates that it might expend as much as $250,000.00 for legal fees. In view of the other defendants herein joined by the plaintiff and the history of the present controversy, an undertaking by plaintiff in the amount of $300,000.00 would be reasonable.

Dubney v. Allegha y Corp. is similar to the case at bar. In Dubney, the plaintiff raised many issues in her complaint that arguably had been decided against her in an earlier suit. A major element in the court's decision to require an undertaking for costs was the fact that "it . . .does appear . . . that plaintiff is trying, in part, to reargue matters

which have been decided adversely to her position in the protracted Breswick litigation. . ." 164 F. Supp. 28,33.

In the present case, there are numerous weaknesses in the plaintiff's claim which favor requiring the plaintiff to post security. As in Leighton v. Paramount Pictures Corp. 340 F. 2d 859 (2d Cir., 1965) cert. den 381 U.S. 925, plaintiff's action does not appear to be meritorious and an undertaking for costs is appropriate.

CONCLUSION

The claim of the Plaintiff is barred by an accord and satisfaction. Plaintiff's first and sixth causes of action are barred by the applicable statutes of limitations. The complaint fails to allege the use of the mails or instrumentalities of interstate commerce. Plaintiff's "John Doe" complaint is neither authorized nor permitted under federal practice. Defendants Intermodal Systems Leasing, Inc., John Overmyer, Elizabeth Overmyer and Edward Overmyer have not been properly served with process. The complaint fails to comply with F.R.C.P. 9(b). The claim of the plaintiff is barred by laches. Pendent jurisdiction should not be exercised over plaintiff's fourth, fifth and sixth causes of action. If the complaint herein is not dismissed, plaintiff should be required to post security for costs.

Respectfully submitted,

Easton & Echtman, P.C.
Attorneys for defendants
Intermodal Systems Leasing, Inc., Daniel H. Overmyer, Shirley Overmyer, John Overmyer, Elizabeth Overmyer, and Edward Overmyer.

IRWIN M. ECHTMAN,
Of Counsel.

AFFIDAVIT OF PAUL W. SIEGE IN OPPOSITION TO MOTION (Filed September 29, 1976) (pp.151a-158a)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

LOCAFRANCE U.S. CORPORATION, Plaintiff, -against-	:	
INTERMODAL SYSTEMS LEASING, INC., DANIEL H. OVERMYER, SHIRLEY OVERMYER, JOHN OVERMYER, ELIZABETH OVERMYER, EDWARD OVERMYER, BARBARA STRANG and "JOHN DOE", that name being fictitious, the true name of the defendant being unknown to plaintiff and the person intended being trustee f/t/b of defendants JOHN OVERMYER, ELIZABETH OVERMYER, EDWARD OVERMYER, and BARBARA STRANG, Defendants.	:	OPPOSING AFFIDAVIT 76 CIV. 2515 (CLB)

STATE OF NEW YORK)
: SS.:
COUNTY OF NEW YORK)

PAUL W. SIEGE, being duly sworn, deposes and says:

1. I am Vice-President of Plaintiff LOCAFRANCE U.S. CORPORATION ("LOCAFRANCE") and I submit this affidavit in opposition to the Defendants' motion to dismiss the complaint and in particular, in response to the affidavit of Mr. David Raible, President of Defendant INTERMODAL SYSTEMS LEASING, INC., ("INTERMODAL").

2. In view of some of the unrelated references made by Mr. Raible, some brief background would prove helpful. INTERMODAL is, and has been, merely a part of the vast complex of corporate entities created by Defendant DANIEL H. OVERMYER ("OVERMYER") over the years. The Overmyer Company began as a

* For purposes of clarity, references to the Overmyer Company will include each of the many Overmyer corporate entities.

warehousing company and subsequently became one of the largest warehousing companies in the United States with operations exapnding into Europe and Canada. At all relevant times, OVERMYER was the virtual sole owner of all the Overmyer corporate entities. In addition to being extremely well-known in the warehousing industry, The Overmyer Company was well known to real estate developers and the general business community as well.

3. The Overmyer Company was involved in constructing, leasing and managing warehouses throughout the United States. As LOCAFRANCE came to appreciate through its dealings with Defendants, the management of warehousing operations is divided into two parts, public and landlord-tenant. LOCAFRANCE was advised that the operation of public warehouses necessitates that the management company provide forklift and other types of loading and hauling equipment in order to service the occupants who desired to rent space on a short-term basis. LOCAFRANCE was further advised that Defendants need money to finance the purchase of this warehousing equipment. After a period of time involving numerous meetings and telephone conferences, LOCAFRANCE and INTERMODAL entered into a series of financing arrangements dated respectively, May 21, 1972, December 7, 1972, June 21, 1973 and August 15, 1974. These financing arrangements are referred to in the Complaint in Paragraphs "11", "12", "13", "14" and "15"*.

* Inasmuch as Defendants did not attach a copy of the Complaint to their moving papers, a copy of the Complaint is annexed hereto as Exhibit "A".

These financing arrangements provided for, at Defendant's request, the raising of working capital for INTERMODAL as well as for the entire OVERMYER organization and in return was intended to provide LOCAFRANCE with a substantial return on its' invested money. Actual physical ownership and responsibility for the use and maintenance of the warehousing equipment at all times remained with INTERMODAL. By July, 1973 LOCAFRANCE had invested more than $1,000,000.00 in INTERMODAL.

4. By December, 1973, INTERMODAL had become substantially in default under the aforesaid financing arrangements. By reason of the ramifications to LOCAFRANCE of INTERMODAL's default under these arrangements, LOCAFRANCE commenced investigations into INTERMODAL's financial posture including many of the representations previously made to LOCAFRANCE. It was as a result of these investigations that LOCAFRANCE started to become aware of substantial misrepresentations and omissions of Defendants. These are detailed in Paragraphs "19", "20", "21" and "22" of the Complaint. For example, financial statements of a number of OVERMYER's companies provided to LOCAFRANCE turned out to be inaccurate, false statements were made as to the negotiation of new leases, cash flow, profits, market value of real estate, new financings.

5. Not content with having fraudulently induced LOCAFRANCE into investing more than $1,000,000.00 in INTERMODAL, and while LOCAFRANCE was in the process of the aforesaid investigation, Defendants chose to institute litigation in Chicago, Illinois against LOCAFRANCE and another party, frivolously

alleging that there existed a conspiracy to take over Defendants' business, which was obviously the last thing LOCAFRANCE would want. Mr. Raible has made reference to this litigation on several occasions as if to imply that the action was similar, to the present controversy. Nothing could be further from the truth since, as Mr. Raible ought to know, that action had nothing to do with the issues presently involved.

6. During the pendency of that action, LOCAFRANCE became increasingly aware of the magnitude of the fraud practiced upon it by Defendants. LOCAFRANCE believed strongly then, as it does now, that Defendants were indebted to LOCAFRANCE in a sum in excess of $700,000, representing the extent of LOCAFRANCE's loss on its investment. Accordingly, when it became apparent during the Chicago litigation that a proposed settlement* would provide LOCAFRANCE with the return (although on a deferred basis) of those monies, LOCAFRANCE was interested. It is important to bring to the attention of the Court that based upon Defendants' express request, Defendants' performance under the proposed settlement agreement was deferred until August, 1975. For example, payments on the liquidated damages aspect were not to fall due until August, 1975. Other provisions of the agreement were structured so as to make it as convenient as possible for Defendants to perform. It should also be pointed out that at no time during the negotiations for the settlement agreement did LOCAFRANCE agree to release forever any potential liability of Defendants for fraud. Since these issues were not

* This agreement actually took the form of a liquidated damages agreement whereby Defendants would be given additional time to repay the acknowledged indebtedness.

wholly relevant to the Chicago action and since LOCAFRANCE did not truly focus on this aspect, the settlement agreement did not address itself to that matter.

7. However, soon after the time when Defendants were required to commence making these deferred payments it became obvious that they were not going to fulfill the terms of the settlement agreement. In fact, from the very beginning there were continuous defaults under the settlement agreement unrelated even to the payment of money. These defaults arose not from the aspect of lack of money but obviously from lack of intent in any way to perform under the agreement. In my opinion, the extensive negotiations leading to the settlement agreement and the settlement agreement itself contained numerous misrepresentations and was intended solely to lull LOCAFRANCE into a false sense of secuirty and to defer the filing of the instant action. I believe that the settlement agreement was nothing more than an effort by Defendants to divert LOCAFRANCE from the fraud.

8. It should also be noted that although Mr. Raible states in his affidavit that he is now President of INTERMODAL, at all relevant times, OVERMYER was Chairman and Chief Executive Officer of INTERMODAL. In my mind, having been a participant in the events in question, I have serious doubts that any of the information contained in Mr. Raible's affidavit is based upon his own personal knowledge. As already noted, Mr. Raible's affidavit is substantially concerned with the

details of the Chicago action, when, in fact, that had nothing to do with the present matter. Contrary to Mr. Raible's statements, of which he could not possibly have personal knowledge, LOCAFRANCE did not learn of the essentials of the Defendants' fraud in November, 1973 but rather, as noted above, it was not until INTERMODAL had already defaulted on the financing arrangements and LOCAFRANCE began making drastic inquiries did many of these misrepresentations and omissions surface. It cannot be over-emphasized that the OVERMYER complex was one of the world's largest warehousing entities and LOCAFRANCE relied substantially on the representations of OVERMYER.

9. In his affidavit Mr. Raible comments upon the settlement negotiations and the execution of a settlement agreement. Significantly, Mr. Raible does not state under oath that INTERMODAL ever complied with that agreement. The truth is that INTERMODAL never did. It is indeed strange that the position INTERMODAL takes is that a "settlement agreement" which it never intended to perform, never did perform, should constitute a bar to LOCAFRANCE seeking the very relief which Defendants intended to dealy.

10. I am advised by counsel that Defendants have raised a suprious issue of subject matter jurisdiction by urging that the complaint is defectively pleaded in that there was a failure to allege specific instances of the use of instrumentalities or means of interstate commerce. Although I am advised by counsel that the complaint is not defective in that regard,

there can be absolutely no dispute between the parties that in the course of the financing arrangements there occurred extensive telephone conferences, extensive correspondence mailed back and forth between the parties and numerous telex exchanges between New York and Paris. Furthermore, it is my understanding that monies invested by LOCAFRANCE were utilized by Defendants at their various warehousing installations throughout the country.

11. In his affidavit, Mr. Raible attempts to argue in support of the imposition of an undertaking that he feels, the legal fees might be substantial, and because he thinks LOCAFRANCE is allegedly attempting to harass Defendants. Firstly, Mr. Raible omits the fact that LOCAFRANCE is a one-man corporation (myself) and that I employ only two assistants who are primarily secretaries. I find it indeed humourous for Mr. Raible to suggest that LOCAFRANCE (the alleged larger corporation) is attempting to harass the OVERMYER organization (the alleged smaller corporation). Aside from the fact that Defendants have already misappropriated more than $1,000,000.00 of LOCAFRANCE's funds, that is clearly not the case. Defendants did not seem to be so "cost conscious" when they dragged LOCA-FRANCE through the courts of Illinois to gain nothing but additional time. And indeed how "cost conscious" can they truly be when, as I am advised by counsel, portions of this motion are directed at such non-substantive items as service of process, post[illegible] security, and "John Doe" complaints.

12. I am further advised by counsel that for

purposes of a motion to dismiss the allegations of the complaint should properly be taken as true. In view of that and in view of the absence of any evidence submitted by Defendants to the contrary, Defendants' motion to dismiss should be denied in all respects.

PAUL W. SIEGE

Sworn to before me this
day of September, 1976

Notary Public

EXHIBIT A - COMPLAINT ANNEXED TO FOREGOING AFFIDAVIT

(Omitted here but printed at p. 5a)

PLAINTIFF'S MEMORANDUM OF LAW IN OPPOSITION TO MOTION (Filed September 29, 1976) (pp.160a-204a)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

LOCAFRANCE U.S. CORPORATION, Plaintiff, -against- INTERMODAL SYSTEMS LEASING, INC., DANIEL H. OVERMYER, SHIRLEY OVERMYER, JOHN OVERMYER, ELIZABETH OVERMYER, EDWARD OVERMYER, BARBARA STRANG and "JOHN DOE", that name being fictitious, the true name of the defendant being unknown to plaintiff and the person intended being trustee f/t/b of defendants JOHN OVERMYER, ELIZABETH OVERMYER, EDWARD OVERMYER, and BARBARA STRANG, Defendants.	MEMORANDUM OF LAW 76 CIV. 2515 (CLB)

PLAINTIFF's MEMORANDUM OF LAW
IN OPPOSITION TO DEFENDANTS'
MOTION TO DISMISS THE COMPLAINT

PRELIMINARY STATEMENT

Plaintiff submits this memorandum of law in opposition to Defendants' motion to dismiss the complaint. The facts are set forth in more pertinent detail in the accompanying affidavit of Mr. PAUL W. SIEGE, Vice-President of Plaintiff LOCAFRANCE U.S. CORPORATION ("LOCAFRANCE").

Briefly stated, however, this action arises out of a series of sale-leaseback arrangements which formed an overall capital financing plan between LOCAFRANCE and Defendant INTERMODAL LEASING SERVICES, INC. ("INTERMODAL"). Defendants' intent in inducing LOCAFRANCE to enter into these capital financing arrangements was to obtain for INTERMODAL, and for Defendants, necessary working capital with the correlative benefit to LOCAFRANCE of a high return on LOCAFRANCE's invested funds. It is LOCAFRANCE's contention that in connection with these capital financing arrangements, Defendants, inter alia, made certain fraudulent misrepresentations and omitted to state certain facts which rendered other statements which were made, fraudulent and misleading in violation of the Securities Act of 1933, the Securities Exchange Act of 1934, the New York General Obligations Law. LOCAFRANCE also asserts claims for common law fraud and negligence.

After LOCAFRANCE began learning of the magnitude of Defendants' fraud and after INTERMODAL had instituted an action against LOCAFRANCE and another party, in Chicago, Illinois, substantial meetings and conferences resulted in a liquidated damages agreement providing for, inter alia, the repayment by Defendants to LOCAFRANCE of

LOCAFRANCE's unrealized capital investment in connection with the aforementioned financing plan. Although this agreement was to become effective in or about July 1974, it was not until August, 1975* that any duty of performance under the agreement by INTERMODAL arose. However, INTERMODAL breached the liquidated damages agreement and did not at any time fulfill its obligations to LOCAFRANCE thereunder. Subsequent to INTERMODAL's default under the said agreement, meetings among the parties and with their respective counsel took place with a view towards avoiding litigation and curing INTERMODAL's default. By May, 1976, it had become apparent that Defendants had no intention (and never did have) of complying with the liquidated damages agreement. On June 7, 1976 this action was filed.

Defendants' instant motion to dismiss is extremely expansive and seeks dismissal on the following alleged grounds:

(a) the existence of an accord and satisfaction;

(b) statute of limitations both as to LOCAFRANCE's claim under §12(2) of the Securities Act of 1933 (15 U.S.C.

* At the request and for the convenience of the Defendants, payments pursuant to the liquidated damages agreement were deferred.

§77(2)) and the negligence claim;

(c) lack of subject matter jurisdiction;

(d) lack of legal justification for the "John Doe" reference to the actual, but unknown Trustee;

(e) insufficiency of service of process by the United States Marshal;

(f) failure to comply with Rule 9(b) of the Federal Rules of Civil Procedure;

(g) laches; and

(h) improper pendent jurisdiction.

Defendants also seek, in the alternative, a more definite statement as to certain particulars of the complaint and request that LOCAFRANCE post security for costs pursuant to §11(e) of the Securities Act of 1933 (15 U.S.C. §77(k)). As indicated hereinafter, the Defendants' arguments in support of the instant motion are not tenable. Accordingly, it is respectfully requested that the same be denied in its entirety.

ARGUMENT

POINT I

THE UTILIZATION OF A "JOHN DOE" REFERENCE TO AN ACTUAL BUT UNKNOWN PARTY IS BOTH PROPER AND APPROPRIATE

Defendants contend that the designation "John Doe" as applied to the actual but unknown trustee of Defendants JOHN OVERMYER, ELIZABETH OVERMYER, EDWARD OVERMYER and BARBARA STRANG is in the nature of a "three ring circus". Defendants, however, omit to inform this Court that when their counsel was requested to disclose the name of the trustee, he refused. Defendants further omit to inform this Court that they have previously advised LOCAFRANCE that all of the stock of INTERMODAL is owned by the aforesaid trusts. In any event, the designation of a Defendant as "John Doe" is appropriate and proper in the case at bar.

> "In the second motion the government moves to dismiss the complaint as to John Doe and Richard Roe on the ground that it is improper to sue fictitious parties. If the basis for jurisdiction of this action were diversity of citizenship, the contention might have merit, 2A Moore's, Federal Practice ¶3.10,p. 1664;

> but here jurisdiction is based upon a federal question. Moreover, these defendants are sued as "unknown employees of the F.B.I. and other agencies of the federal government." In other words, they are real persons whose names are not yet known to plaintiff. They are like the "Six Unknown Agents of The Federal Bureau of Narcotics" in Bivens v. Six Unknown Federal Narcotics Agents, 403 U.S. 388, 91 S. Ct. 1999, 29 L. Ed. 2d 619 (1971). Accordingly, the motion to dismiss because fictional persons are being sued is denied." Lowenstein v. Rooney, 401 F. Supp. 952, 960 (E.D.N.Y. 1975) (Emphasis Added)

Defendants argue that the use of "John Doe" in a caption "is neither authorized nor permitted under Federal Practice," yet they fail to refer to any provision in the Federal Rules of Civil Procedure precluding the use of fictitious names. Nevertheless, although apparently, unbeknownst to Defendants, fictitious names have been continuously utilized in this Court. (Emphasis Supplied):

> "THE STATE OF NEW YORK, Plaintiff-Appellant, against DANNY WHITE, PAUL WHITE, JR., PAUL WHITE and NORMA WHITE, his wife, LORRAINE MONTOUR, THOMAS DELARANDE and LORRAINE DELARANDE, his wife, JOHN HEMLOCK, ALLEN HEMLOCK, DIANE HEMLOCK, EARL FRANCIS CROSS, CHRISTOPHER HEMLOCK, ANGUS DEER, DAVID DEER, DAVID DEERHOUSE, WARREN DEER, JIMMY DEER, PAUL WILLIAMS, ALEX AKWIENZIE, TOM COOK,

DOUGLAS PINE, ANNIE JOCK, "JOHN" GAMBLE, first name John being fictitious, real first name not being known to plaintiff, person intended being in possession of State land in Town of Webb, Herkimer County; "JOHN DOE," RICHARD ROE," "RITA ROE," "GERALD GOE," "JANE COE," "SAM FOE," "GLADYS HOE," "AL JOE," "JANE DOE," "SUE WOE," "PETER MOE," "PHILIP SOE," "CAROL ZOE," "DONALD POE," FRED MOE," "BOB DOE," "WARREN KOE," "BILL VOE," and "JOE WOE," true names of parties being unknown, parties intended being in possession of State land in the Town of Webb, Herkimer County, Defendants-Appellees., Docket No. 75-7254 No. 148 - September Term, 1975. UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT, 528 F. 2d 336 December 29, 1975."

JOSEPH MULLER CORPORATION ZURICH, Plaintiff-Appellant, v. SOCIETE ANONYME DE GERANCE ET D'ARMEMENT, GAZOCEAN U.S.A., JOHN DOE and RICHARD ROE, JOHN DOE CORPORATION and RICHARD ROE CORPORATION, the names of the defendants, JOHN DOE, RICHARD ROE, JOHN DOE CORPORATION, and RICHARD ROE CORPORATION being fictitious, their real names and identities presently unknown to the plaintiff, defendants, GAZOCEAN INTERNATIONAL, S.A., GAZOCEAN FRANCE, PETROMAR SOCIETE ANONYME, and MUNDO GAS, S.A., Defendants- Appellees., Docket No. 74-1889 No. 154 - September Term, 1974, UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT, 508 F. 2d 814: 1975 Trade Cas. P. 60, 101, December 31, 1974."

JOSEPH E. BLOUIN, JR. and FRED GRIESE, Plaintiffs-Appellants, v. HON. NANETTE DEMBITZ, HON. FLORENCE M. KELLEY, and THE HON. RALPH EDWARD CORY, JUDGES OF THE FAMILY COURT OF THE STATE OF NEW YORK, CITY OF NEW YORK: JOHN DOE, RICHARD ROE, and PETER ROE, names being

fictitious, all being Judges, Servants, Agents, and Employees of the FAMILY COURT OF THE STATE OF NEW YORK, CITY OF NEW YORK: THE STATE OF NEW YORK: and the CITY OF NEW YORK, Defendants-Appellees., Docket No. 73-1686 No. 104 - September Term, 1973., UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT, 489 F. 2d 488, December 13, 1973.

"Isidore ENGLEMAN, Plaintiff-Appellee, v. William CAHN. As District Attorney of The County of Nassau, State of New York, Thomas De MAOLA, "JOHN" Baldwin, "John Doe" and "Richard Roe," individually and as police officers of the Nassau County Police. The names "John" "John Doe" and"Richard Roe" are fictitious and unknown to Plaintiff and are intended to be and are hereby designated as other officers of the Nassau County Police who have knowledge or are Depositories of Telephone wiretapped or bugged conversations hereinafter in this complaint described. Defendants-Appellants., No. 217, Docket 33806., United States Court of Appeals Second Circuit, 425 F. 2d 954. Dec. 15, 1969 Certidraft Denied March 30, 1970." See also, Kern v. A.J. Hettinger 303 F. 2d 333 (2d Cir. 1962); State of New York v. Local 1115 Joint Board 412 F. Supp. 720 (E.D.N.Y. 1976); Oxman v. T. Rowe Price CCH Fed Sec. R ¶ 93,338 (S.D.N.Y. 1972)

The cases cited by Defendants purportedly in support of their argument uniformly deal with problems of diversity of citizenship. Consequently, the only possible justification for eliminating a "John Doe" allegation is the possibility that his citizenship will defeat diversity jurisdiction. (2A Moore's Federal Practice Ed. 19 ¶ 8.10). Where, as here, jurisdiction

is not based on diversity but rather on a federal question, that reasoning is inapplicable and Defendants' argument must fail.

As noted above, the trustee is a real person whose name is not yet known to LOCAFRANCE despite attempts made prior to the institution of this action to ascertain his or her actual name. Section 1024 of the New York Civil Practice Law and Rules states:

> "A party who is ignorant, in whole or in part, of the name or identity of a person who may properly be made a party, may proceed against such person as an unknown party by designating so much of his name and identity as is known. If the name or remainder of the name becomes known all subsequent proceedings shall be taken under the true name and all prior proceedings shall be deemed amended accordingly."

Should LOCAFRANCE obtain the actual name of the trustee, the complaint could be amended so as to reflect his correct name, in accordance with the foregoing section of the Civil Practice Law and Rules. As Judge Weinstein stated in Callahan v. American Sugar Refining Co. 47 F. R.D. 359, 361 (E.D.N.Y. 1969).

> "Although the question of whether or not to permit the complaint to be

> amended would be considered procedural for Erie purposes (see Hanna v. Plumer, 380 U.S. 460, 85 S. Ct. 1136, 14 L. Ed. 2d 8 (1955)), it clearly has substantive overtones. Under such circumstances, we ought to follow state practice if we can do so without doing violence to federal policy. See Szantay v. Beech Aircraft Corp., 349 F. 2d 60 (4th Cir. 1965); Petition of Merry Queen Transfer Corp., 269 F. Supp. 812 (E.D. N.Y. 1967); United States v. Noble, 269 F. Supp. 814, 816 (E.D.N.Y. 1967); Hill, State Procedural Law in Federal Nondiversity Litigation, 69 Harv. L. Rev. 66 (1955); Hill Substance and Procedure in State FELA Actions -- The Converse of the Erie Problem, 17 Ohio St. L. J. 384 (1956)."

Consequently, there will be no "violence to federal policy" by allowing the trustee in this action to be designated as "John Doe" pending discovery of his true name. The Federal Rules of Civil Procedure contain no prohibition against the use of fictitious names and, in any event any concern with respect to the "John Doe" designation relates only to cases which are predicated on diversity jurisdiction, not federal questions.

POINT II

THE DOCTRINE OF ACCORD AND SATISFACTION IS INAPPLICABLE AS A BAR TO THIS ACTION

Defendants contend that the liquidated damages settlement agreement entered into between LOCAFRANCE and Defendants in or about July, 1974, precludes LOCAFRANCE from maintaining this action. Defendants argue that the aforesaid agreement constituted an accord and satisfaction and, as such, operates as a complete bar. As is noted in the accompanying affidavit of MR. SIEGE, that agreement arose out of an action instituted by Defendants in Chicago, Illinois which Defendants have breached in all material respects. It is clear from Mr. SIEGE's affidavit (which at no point is disputed by Defendants) that there never existed an expressed intent to discharge the obligations upon which the agreement was predicated without performance of the agreement by the Defendants. Consequently, the agreement did not constitute an accord and satisfaction.

> "An accord and satisfaction is an agreement between two parties under the terms of which an unresolved account is settled by some stipulated payment (Restatement, Contract, sec. 417). To establish an accord and satisfaction, the parties must show an intention to discharge the old

> obligation when the new one has been performed (Wyatt v. New York O. & W. R.R. Co., 45 F. 2d 705)." Rein v. Wagner 268 N.Y.S. 2d 659, 662 (Sup. Ct. N.Y. Co. 1965).* (Emphasis Added).

In American Broadcast, etc. v. American Mfrs. M.I. Co. 265 N.Y.S. 2d 76 (Sup. Ct. N.Y. Co. 1965), plaintiff brought an action for breach of a sponsorship contract. In discussing the elements of an accord and satisfaction, the Court stated:

> "But, even if the Board had accepted the offer, that would have been only an executory accord, defined as an agreement embodying a promise to accept at some future time a stipulated performance in satisfaction of a present claim or obligation and a corresponding promise to render such performance in satisfaction of such claim or obligation (General Obligations Law, §15-501(1), derived from Personal Property Law, §33-a(1). And, then, if Kemper had subsequently failed to perform the accord, according to its terms, ABC would have had the choice of suing on the accord or the original obligation (General Obligations Law, §15-501(3), derived from Personal Property Law, §33-a(3) ...
>
> It is true that, where the parties have clearly expressed or manifested their intention that a subsequent agreement supersede or substitute for an old agreement, the subsequent agreement extinguishes the old one and the remedy for any breach thereof is to sue on the superseding agreement (Blair & Co. v. Otto V., 5 A.D. 2d 276, 171 N.Y.S. 2d 203). But, if the intention of the parties, expressed by their conduct or words, is merely that the

* Paragraph 23 of the agreement provides that it shall be "construed and enforced in accordance with the laws of the State of New York".

> subsequent agreement provide for a future performance to be accepted as future satisfaction of an old obligation, such agreement is an executory accord, full performance of which alone extinguishes the old obligation. In the absence of a clear showing warranting a finding of supersede or substitution: "It is generally more reasonable to suppose that [a creditor] bound himself to surrender his old rights only when the new contract of accord was performed". (6 Williston on Contracts [rev. ed] §1847). In Goldbard v. Empire State Mutual Life Ins. Co., 5 A.D. 2d 230, 171 N.Y.S. 2d 194, the court held that there was nothing in the series of informal conversations to suggest the finality, deliberateness or occasional formalization associated with substituted agreements and the specific intention to discharge pre-existing obligations." 265 N.Y.S. 2d at 84,85 (Emphasis Added).

Defendants apparently have confused the doctrine of an executory accord with the doctrine of a superseding agreement or novation. It is only where the parties by clear and convincing evidence have agreed to supersede an agreement that the original claim is extinguished. Langlois v. Langlois 169 N.Y.S. 2d 170, 173 (3rd Dep't 1957). See also Restatement of Contracts §418, Comment a. Such an intent did not exist in connection with the instant liquidated damages settlement agreement and accordingly, there was neither an accord and satisfaction or an extinguishment of the defendants' underlying obligations and LOCAFRANCE's action is therefore not barred.

In any event, completely dispositive of Defendants' argument is §15-501 of the New York General Obligations Law which provides, in pertinent part:

> "3. If an executory accord is not performed according to its terms by one party the other party shall be entitled either to assert his rights under the claim cause of action, contract, obligation, lease, mortgage or other security interest which is the subject of the accord or to assert his right under the accord."

See also Goldbard v. Empire State Mutual Life Insurance Co. 171 N.Y.S. 2d 194 1st Dep't, 1958); Suss v. United Silk Weavers Corp. 150 N.Y.S. 2d 318 (N.Y. City Ct., 1955); Pfleider v. De Veaux 148 N.Y.S. 2d 836 (Sup. Ct. Nassau Co. 1956). Accordingly, the Defendants' alleged defense of an accord and satisfaction must fail by reason of the non-existence of the satisfaction. Therefore, even if the present action formed a part of the obligations (which LOCAFRANCE disputes), LOCAFRANCE is not precluded from maintaining this action.*

Furthermore, even assuming arguendo that such a defense were applicable, it is clearly inappropriate for consideration upon a motion to dismiss. Any such determination

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* Although unnecessary for this Court to consider, §29 of the Securities and Exchange Act (13 U.S.C. 78 cc) would render unenforceable any agreement to waive or release violations of the federal securities laws.

of the interpretation, meaning or effect of an accord and satisfaction is an issue of fact requiring a full evidentiary hearing. Warner v. Rossignol 513 F. 2d 678 (1st Cir. 1975); Galusha v. Schur 247 N.Y.S. 2d 988 (3d Dep't 1964); Krucenski v. Lorenzo 201 N.Y.S. 2d 636 (Niagara County Court 1960); House v. Manor Poultry Corp. 131 N.Y.S. 2d 102 (3d Dep't 1954).

POINT III

THE CLAIMS IN THE COMPLAINT ARE PLEADED WITH SUFFICIENT PARTICULARITY

Defendants maintain that the claims of LOCAFRANCE which are grounded in fraud* should be dismissed because they are not pleaded with sufficient particularity pursuant to Rule 9 of the Federal Rules of Civil Procedure. For the reasons set forth hereinafter, this contention has no merit. All of the claims in the complaint are pleaded with more than sufficient particularity to satisfy Rule 9(b).

Rule 9(b) states:

> "In all averments of fraud or mistake, the circumstances constituting fraud or mistake shall be stated with particularity. Malice, intent, knowledge and other condition of mind of a person may be averred generally."

Although no definitive standard has been established for determining the sufficiency of a claim in connection with a Rule 9(b) challenge (Binewski Limited Partnership v. Tising, 19 F.R. Serv. 2d 23 (E.D. Wis. 1974)), nonetheless, some general tests have been formulated. Thus, Professor Moore has written:

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* The FIRST (§12(2)), SECOND (§17(a)), THIRD (§10(b)), FOURTH (§352-c) and FIFTH (common law) claims.

> "...the circumstances constituting fraud must be stated with particularity. Normally this means that the pleader must state the time, place and content of the false misrepresentation, the fact misrepresented and what was obtained or given up as a consequence of the fraud." [Footnotes Omitted] 2A J. Moore, Federal Practice ¶9.03, at 1928 (2d Ed. 1968) (Emphasis Supplied).

In accordance with the foregoing, the Courts have held:

> The theory of Rule 9(b) is that the defendant in a case wherein the plaintiff alleges ... fraud ... should be rather specifically apprised by the plaintiff's pleading of the occasion on which and the circumstances under which he allegedly defrauded a particular plaintiff. It is obvious that a plaintiff may not be privy to the workings of a group of defendants who have acted in concert to defraud him, but he can at least identify the particular defendants who allegedly dealt directly with him, and he can describe the circumstances under which particular defendants dealt directly with him... [T]he plaintiff cannot be required to allege with particularity the manner in which individual defendants acted in concert..." Competitive Associates, Inc. v. Fire Fly Enterprises, Inc., 16 F. R. Serv. 2d 1446, 1446 (S.D.N.Y. 1972) (Emphasis Supplied).

* * * *

> "Plaintiffs' allegations sufficiently set forth the time and circumstances under which the violations supposedly took place. For the purposes of the motion of defendant .... I therefore find that adequate notice for a responsive pleading has been given." Bienewiski Limited Partnership v. Tising, supra, at 24 (Citations Omitted) (Emphasis Supplied).

* * * *

> "... the Court does not find the complaint so vague or ambiguous that defendants cannot reasonably be required to frame a responsive pleading thereto. Should defendants deem greater particularity necessary to the preparation of an adequate defense, recourse to various discovery procedures may be had." Collins v. Rukin, 342 F. Supp. 1282, 1293 (D. Mass. 1972) (Emphasis Supplied).
>
> * * * *
>
> "...[the Federal Rules of Civil Procedure] do not require claimant to set out in detail facts upon which he bases his claim. To the contrary, all the Rules require is a short and plain statement of the claim that will give the defendant fair notice of what the plaintiff's claim is and the grounds upon which it rests." [Citations Omitted] Shemtob v. Shearson, Hammill & Co. 448 F. 2d 422, 444 (2d Cir. 1971) (Emphasis Supplied).

Based upon the aforecited cases, it is evident that the specificity required by Rule 9(b) for a claim of fraud will be satisfied if a defendant is given notice of the participants in, and the time, place and circumstances of, the fraud so that the defendant can frame a responsive pleading to the allegations. It is submitted that the allegations contained in the complaint of LOCAFRANCE clearly meet this notice standard of pleading.

The claims of fraud alleged in the complaint relate to four (4) sale leaseback financing arrangements between LOCAFRANCE and INTERMODAL (Complaint, ¶¶11, 12, 13 and 14). With respect to each such financing arrangement, the date of

the transaction, its subject matter and its essential terms are alleged. Within this context, and in connection with the financing arrangements, it is alleged that Defendants made a number of material misrepresentations (Complaint, ¶¶ 19 (A-L)) and/or omitted to state material facts necessary to make the representations which were made not misleading (Complaint, ¶¶20(A-C)), the substance of which misrepresentations and omissions are clearly delineated. With respect to eight of twelve of the alleged misrepresentations (Complaint ¶¶19(E-L)), it is alleged that "...[Daniel H] OVERMYER stated..." or "... represented" each to LOCAFRANCE and the approximate date of each misrepresentation is set forth (as is the approximate date of the misrepresentation alleged in ¶19A)*. Three of the remaining misrepresentations (Complaint ¶¶19(B-D)) relate to dated financial statements of OVERMYER companies with respect to which the time of, and person who made, the same is essentially irrelevant. The last alleged misrepresentation, ¶19(a), supra, merely relates to the general corporate status of the OVERMYER companies. With respect to the circumstances of the fraudulent omissions averred in the Complaint (¶¶20 (A-C)), it is alleged that

* With respect to the misrepresentation alleged in ¶19L, the date of the same was prior to each of the financing arrangements, the dates of which are contained in ¶¶11 through 14.

each occurred "in connection with the said sale leaseback arrangements". Consequently, the approximate time of the omissions is stated and, by definition, the precise time, place and specific person who made the omission cannot be alleged.

It is therefore submitted that the circumstances of the fraud upon which the respective claims alleged in the complaint are predicated are specifically pleaded. The substance of each of the alleged misrepresentations and omissions is set forth. In addition, the time when each misrepresentation or omission occurred and the individual who made the misrepresentation (where applicable) is alleged. More particular allegations of fraud are difficult to envision. At the very least, Defendants have clearly been given adequate or fair notice of the basis for LOCAFRANCE's claims of fraud. Accordingly, LOCAFRANCE has pleaded the fraud with sufficient particularity to permit Defendants to frame a responsive pleading and the motion of Defendants to dismiss the claims in the complaint which are predicated upon allegations of fraud pursuant to Rule 9(b) should be summarily dismissed. If Defendants desire any further particularity, they should be relegated to obtaining the same through discovery, supra. Alternatively, if the complaint is held to be deficient, it is respectfully requested that LOCAFRANCE be given leave to amend.

POINT IV

THE COMPLAINT ADEQUATELY PLEADS THE USE OF THE MEANS OR INSTRUMENTALITIES OF INTERSTATE COMMERCE

LOCAFRANCE takes no issue with Defendants' position that evidence must ultimately be adduced to indicate what means or instrumentalities of interstate commerce were utilized in order to establish subject matter jurisdiction with respect to LOCAFRANCE's claims pursuant to the federal securities laws.* However, Defendants' argument that such evidence must appear in the complaint is meritless. Defendants rely entirely upon Fischer v. New York Stock Exchange, 408 Supp. 745 (S.D.N.Y. 1976) where Judge Lasker requested the plaintiff to file an amended complaint. But in Fischer, Judge Lasker stated:

> "The lenders have entirely failed to allege the requisite connection between the unlawful activity and means or instrumentality of interstate commerce . . ." (408 F. Supp. at 757)

The complaint herein is not so deficient, infra, and clearly complies with the standard of sufficiency relied upon by Judge Lasker:

* The FIRST (§12(2)), SECOND (§17(a)) and THIRD (§10(b)) claims.

> "It will be sufficient at this stage of the litigation to allege the connection and set forth whatever factual basis for the claim the lenders currently possess, even if that basis falls short of the specificity which would ultimately be required to defeat a motion for summary judgment after there has been an opportunity for discovery." 408 Supp. at 757, fn.13.

In Heyman v. Heyman, 356 F. Supp. 958 (S.D.N.Y. 1973), defendants urged that the complaint be dismissed because it failed to allege that any means or instrumentality of interstate commerce was used in connection with the alleged fraudulent transactions. In response, Judge Bauman stated:

> "... it is well settled that the fraud itself need not be transmitted through the jurisdictional means. All that is necessary is that the designated means be used in some phase of the transaction, which need not be the part in which the fraud occurs. (citations omitted)" 356 F. Supp. at 969.

With respect to the alleged failure of specificity, Judge Bauman held:

> "Even assuming that the pleadings are technically defective in failing to allege with specificity the use of instrumentalities of interstate commerce, dismissal on that ground would be unwarranted. A similar argument for dismissal was, for example, rejected by Judge Palmieri in Filmways, Inc. v. Artistic Liquidating Corp., CHC Fed.

> Sec. L. Rep. ¶92,332 (S.D.N.Y. 1969). He noted that the many pretrial techniques of discovery and inspection would afford a sufficient opportunity to ascertain the extent of the use of the telephone and the mails and concluded, as I do here, that the plaintiffs' failure to set out with precision defendants' use of these instrumentalities is a defect easily remedied and one which should not bar their suit." 356 F. Supp. 969.

In any event, LOCAFRANCE has alleged the means and/or instrumentalities with sufficient particularity. The fraudulent misrepresentation and omissions are set forth in Paragraphs 19 through 22 of the complaint. It is further provided in Paragraph 23 of the complaint that each of these allegations were incorporated into each of LOCAFRANCE's claims, including those claims under the federal securities acts. In Paragraphs 25, 29 and 33, it is specifically asserted that the alleged misrepresentations and omissions occurred through the use of means or instrumentalities of interstate commerce. Therefore, Defendants' position that the complaint does not contain the "barest minimum of a factual allegation concerning the use of the means and instrumentalities of interstate commerce" is both erroneous and misleading. See also Nagler v. Admiral Corporation 248 F. 2d 319 (2d Cir. 1957); Bellmore Sales Corp. v. Winfield Drug Stores, Inc. 187

F. Supp. 161 (S.D.N.Y. 1960); 3 Bromberg, Securities Law: Fraud, ¶11.2 (1975).

Finally, and in any event, in his affidavit, Mr. SIEGE has indicated the use of the means of instrumentalities of interstate commerce upon which the federal securities' claims are predicated. Accordingly, Defendants' argument is without merit. If a contrary determination is made, LOCAFRANCE respectfully requests leave to amend.

POINT V

THE FIRST CLAIM OF LOCAFRANCE IS NOT BARRED BY THE STATUTE OF LIMITATIONS

The first claim of LOCAFRANCE is predicated upon §12(2) of the Securities Act of 1933 and seeks, inter alia, rescission of the four (4) sale-leaseback financing arrangements (the securities or investment contracts) between LOCAFRANCE and Defendants on the grounds that in connection with such arrangements Defendants made various fraudulent misrepresentations and omissions. Defendants contend that this first claim is barred by the statute of limitations because

> (1) The first three (3) sale-leaseback arrangements occurred on May 31, 1972, December 7, 1972 and June 21, 1973 and therefore are barred by that portion of §13 of the Securities Act of 1933 which provides that "in no event shall ... [an action] be brought to enforce a liability created under ... Section 12(2) more than three years after the sale."
>
> (2) The misrepresentations and omissions with respect tot he fourth and last sale-leaseback arrangements (which occurred on August 15, 1974) were discovered before March 27, 1974 and therefore are barred by that portion of §13 of the Securities Act of 1933 which provides that "no action shall be maintained to enforce any liability created under ...

> Section 12(2) unless brought within one year after the discovery of the untrue statement or omission, or after such discovery should have been made by the exercise of reasonable diligence ..."

Neither of these arguments requires a dismissal of LOCAFRANCE's claim under §12(2).

The complaint in this action was filed on June 7, 1976. Rule 3 of the Federal Rules of Civil Procedure provides:

> "A civil action is commenced by filing a complaint with the court."

Consequently, LOCAFRANCE "brought" or commenced its action or claim pursuant to §12(2) on June 7, 1976 and June 7, 1976 is the date which must be utilized in computing whether the claim is barred by §13. Contrary to the argument of Defendants, in the circumstances at bar, the date of service of the summons and complaint is irrelevant. See Weaver v. United California Bank, 350 F. Supp. 1373 (N.D. Cal. 1972). Because the applicable computation date for purposes of §13 is June 7, 1976, the three (3) year limitation contained therein does not bar an action with respect to third and fourth financing arrangements (June 21, 1973 and August 15, 1974, respectively). Both of these arrangements occurred within three (3) years prior to June 7, 1976.

In addition, the three (3) year limitation of §13 does not bar the §12(2) claim of LOCAFRANCE with respect to the first or the second financing arrangments (May 31, 1972 and December 7, 1972, respectively). Although these arrangements were consummated more than three (3) years prior to June 7, 1976, it is nevertheless submitted that because such arrangements were part of an overall scheme of Defendants to defraud LOCAFRANCE, the three (3) year limitation in §13 should be tolled. The fraud perpetrated by Defendants on LOCAFRANCE commenced prior to the first financing arrangement, continued through the consummation of the fourth, and, arguably, until discovery of the fraud after August 15, 1974. Consequently, the Defendant's fraud was a "continuing wrong" which was not "complete" until August 15, 1974 (at the very earliest) and, therefore, the three (3) year limitation should be tolled until that date. See Boland v. State of New York, 30 N.Y. 2d 337 (1972) and cases cited therein.* In turn, if the three (3) year limitation is tolled pending the completion of the Defendants' fraud until August 15, 1974, LOCAFRANCE is not precluded by §13 from commencing an action pursuant to §12(2) with respect to each component of the continuing fraud, including the financing arrangements in May and December, 1972,

* Admittedly, no federal authority has been found which has applied the "continuing wrong doctrine" to a §12(2) claim.

regardless of the fact that such financing arrangements occurred more than three (3) years prior to June 7, 1976. A contrary conclusion would reward those defendants who are most insidious and therefore capable of successfully continuing and secreting their fraudulent conduct until three (3) years after the last constituent fraudulent act occurred. Such a result is contrary to the general purpose and intent of the securities acts and §12(2) in particular. Finally, and regardless of whether the "continuous wrong doctrine" is applicable, Defendants are equitably estopped from asserting that the three (3) year limitation is a bar to the §12(2) claims of LOCAFRANCE with respect to the first and second financing arrangements by reason of the August 15, 1974 liquidated damages agreement which precluded LOCAFRANCE from instituting an action until August, 1975.* Since less than three (3) years elapsed between August, 1975 and the date when the complaint was filed (June 7, 1976), the §12(2) claim of LOCAFRANCE in connection with the first and second financing arrangements is timely.

The second argument of Defendants, supra, that a claim with respect to the August 15, 1974 financing arrangement is barred by the one (1) year discovery provision in

*See Point VI, infra, and cases cited therein.

§13, is similarly unfounded. Even assuming that LOCAFRANCE had, or by the exercise of reasonable diligence could have, discovered the fraud of Defendants in or about August, 1974, Defendants are nevertheless equitably estopped from asserting the one (1) year limitation in §13 as a bar with respect to the August, 1974 financing arrangement because the August, 1974 liquidated damages agreement between LOCAFRANCE and Defendants precluded LOCAFRANCE from instituting an action prior to August, 1975 and less than one (1) year has elapsed between such date and June 7, 1976 when the complaint was filed. In any event, at the very least, the date upon which LOCAFRANCE discovered the fraud is a question of fact which should not be resolved on affidavits at this juncture in the proceedings. Morris v. Feldman, CCH Fed. Sec. L. Rep. ¶91,426 (S.D.N.Y. 1964) and Dyer v. Eastern Trust and Banking Company, 336 F. Supp. 890 (N.D. Maine 1971).

By reason of the foregoing, each of the contentions of the Defendants with respect to the effect of §13 on the §12(2) claim of LOCAFRANCE is without merit. The §12(2) claim was brought within the time limitations of §13 and, accordingly, the Defendants' motion in connection with the first claim of LOCAFRANCE should be denied.

POINT VI

LOCAFRANCE'S CLAIM FOR NEGLIGENCE IS NOT BARRED BY THE STATUTE OF LIMITATIONS

Defendants urge that the sixth claim is barred by the three (3) year statute of limitations applicable to negligence actions.* Initially, Defendants incorrectly assert that July 21, 1976 is the appropriate measuring date for purposes of the statute of limitations. Rule 3 of the Federal Rules of Civil Procedure provides:

> "A civil action is commenced by filing a complaint with the court."

Accordingly, the date the complaint was filed, June 7, 1976, is the relevant date for computing the effect of the statute of limitations. As is set forth in the accompanying affidavit of Mr. SIEGE and in the complaint, during the period from May 31, 1972 until August 15, 1974, LOCAFRANCE and Defendants effected a series of financing arrangements whereby LOCAFRANCE invested more than $1,000,000.00. As already noted, these capital financing arrangements were all part of one overall financing plan for the Defendants' benefit.

*§214 of the Civil Practice Law and Rules.

Accordingly, since the negligence of the Defendants in connection with the financing plan continued or was not completed until August 15, 1974, the action did not accrue until August 15 and cannot be deemed barred by the three (3) year statute of limitations. Borgia v. City of New York, 12 N.Y. 2d 151 (1962); Marine Midland Trust Company v. Penberthy, etc. 60 Misc. 2d 11 (Sup. Ct. Oneida Co. 1969); Schwartz v. Heyden 12 N.Y. 2d 212 (1963). All the individual financing arrangements were part of an entire plan of financing requested by Defendants under a continuing relationship or transaction theory. In any event, the June 15, 1973 transaction and the August 15, 1974 transactions are certainly not barred.

Furthermore, although elements of the negligence claim may have arisen prior to June, 1973, as Mr. SIEGE's affidavit indicates, LOCAFRANCE could not have avoided the application of the statute of limitations since by the terms of the liquidated damages settlement agreement, the very document which was to allow Defendants an opportunity to extricate themselves from liability to LOCAFRANCE, Defendants had no affirmative obligation to perform for one year (until August, 1975). Thus no default could occur until August, 1975, and by their false representations that the alleged executory accord would be fully performed, Defendant precluded LOCAFRANCE from instituting any action during that one year period.

Accordingly, LOCAFRANCE submits that the doctrine of equitable estoppel precludes Defendants from asserting the statute of limitations as a bar to this action. Triple Cities Constr. Co. v. Maryland Cas. 4 N.Y. 2d 443 (1958); General Stencils v. Chiappa 18 N.Y. 2d 125 (1966); Lorentz v. Lezette 28 A.D. 2d 954 (3rd Dept. 1967); Robinson v. City of New York 24 A.D. 2d 260 (1st Dep't 1965); Erbe v. Lincoln Rochester Trust 13 A.D. 2d 211 (4th Dep't 1961); Kyle v. Village of Catskill 81 Misc. 2d 1035 (Sup. Ct. Greene Co. 1975). At the very least the issue of whether the doctrine of equitable estoppel precludes the application of the statute of limitations is factual in nature and should not properly be determined upon a motion to dismiss.

POINT VII

PENDENT JURISDICTION IS APPROPRIATE AS TO THE FOURTH, FIFTH AND SIXTH CLAIMS

Defendants urge that this Court should not exercise pendent jurisdiction as to the Fourth, Fifth and Sixth claims of the complaint. The Fourth claim asserts a violation of §352-C of the General Business Law of the State of New York, the New York securities fraud statute, the Fifth claim asserts liability grounded in common law fraud and the Sixth claim asserts Defendants' liability for negligence. As is patently clear from the complaint, all three pendent jurisdiction claims arise out of the very same factual circumstances as do the claims predicated upon the Securities Act of 1933 (15 U.S.C. §77(a)) and the Securities Exchange Act of 1934 (15 U.S.C. §77(a)). Although Defendants selectively quote from Justice Brennan's opinion in United Mine Workers v. Gibbs 383 U.S. 715 in support of their position that pendent jurisdiction should not be exercised in this action, it is clear that Justice Brennan advocated an expansion of the doctrine of pendent jurisdiction:

> "Under the Rules, the impulse is toward entertaining the broadest possible scope

> of action consistent with fairness to the parties; joinder of claims, parties and remedies is strongly encouraged.... .
>
> "Pendent jurisdiction, in the sense of judicial power, exists whenever there is a claim 'arising under [the] Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority...' U.S. Const., Art. III, §2, and the relationship between that claim and the state claim permits the conclusion that the entire action before the court comprises but one constitutional 'case.' The federal claim must have substance sufficient to confer subject matter jurisdiction on the court.... The State and federal claim must derive from a common nucleus of operative fact. But if, considered without regard to their federal or state character, a plaintiff's claims are such that he would ordinarily be expected to try them all in one judicial proceeding, then, assuming substantiality of the federal issues, there is power in federal courts to hear the whole." [Footnotes Omitted] 383 U.S. at 724-725.

Similarly, as Judge Pollack stated in Abdelnour v. Coggeshall & Hicks, 287 F. Supp. 135 (S.D.N.Y. 1968):

> "Utilizing considerations of judicial economy, convenience and fairness to litigants and, at this posture of the case, viewing the complaint most favorably to plaintiff the Court cannot conclude that plaintiff has failed to meet the requirements for pendent jurisdiction. Both the federal and non-federal claims can be said to derive from a "common nucleus of operative fact" - viz., defendants' alleged misrepresentation. Cf. Lapidus v. Jesup & Lamont, 276 F. Supp. 762 (S.D.N.Y. 1967). The substantive merit of the claims, however doubtful, is not a subject for present determination." (287 F. Supp. at 137) (Emphasis Added)

Accordingly, there can be no dispute that pendent jurisdiction is available as a basis for jurisdiction of the Fourth, Fifth and Sixth claims. Bowman v. Hartig 334 F. Supp. 1323 (S.D.N.Y. 1971); Gruss v. Curtis Publishing Company 361 F. Supp. 58 (S.D.N.Y. 1973); Maher v. J. R. Williston & Beane, Inc. 280 F. Supp. 133 (S.D.N.Y. 1967).

Finally, Defendants statement that LOCAFRANCE "could conveniently litigate these issues in state court" is illogical since that would only mean two trials in lieu of one as to the very same fact pattern.

POINT VIII

LOCAFRANCE'S CLAIMS ARE NOT BARRED BY LACHES

Defendants argue that because LOCAFRANCE became aware of Defendants' fraudulent scheme in March and April, 1974 LOCAFRANCE is guilty of laches and therefore LOCAFRANCE's claim should be barred. As is pointed out in the affidavit of Mr. SIEGE there has been absolutely no delay in instituting the instant action.

In connection with their argument, Defendants omit to point out that between April, 1974 and June, 1976 they (a) instituted litigation in Chicago against LOCAFRANCE (b) requested a liquidated damages agreement which did not require the payment of any monies to LOCAFRANCE until August, 1975, (c) breached in all material respects the liquidated damages agreement and (d) induced LOCAFRANCE to participate in further discussions up to and including the spring of 1976. Shortly, thereafter, the complaint in this action was filed. Accordingly, in the first instance, LOCAFRANCE has not been guilty of any unreasonable delay which would warrant the application of laches.

Assuming arguendo that there existed delay in instituting the instant action, such delay was induced by Defendants in representing that LOCAFRANCE's capital investment (fraudulently obtained) would be repaid through the medium of the liquidated damages agreement. Even after Defendants thereupon breached the liquidated damages agreement, Defendants induced LOCAFRANCE to participate in further settlement discussions. Under these circumstances, the defense of laches is without merit. Johnson v. Trask 116 N.Y. 136 (1889); Corpus Juris Secundum Equity §127. Indeed, in view of such conduct by the Defendants, it is submitted that they are equitably estopped from raising the defense of laches.*

The cases relied upon by Defendants in support of their position are inapposite. In Hansen v. Slick, 216 F. 164, 172 W.D. Pa. 1914), the plaintiffs' claims were not barred by laches. Rather, laches was merely defined by the court. Similarly, in Bankers Federal Savings and Loan Asso. v. Rudd 264 A.D. 739 (2nd Dep't 1942), the defendants were in default on a mortgage that they had paid interest and premiums on for four years. At the time of foreclosure defendants maintained that fraudulent representations were

*See Point VI, supra

made at the time they entered into the mortgage agreement. Although it was held that this claim was barred by "laches", the defendants had waited four years, without justification, to raise the issue. In the case at bar, at most, LOCAFRANCE has only unjustifiably "delayed" for a period of approximately two months.

Furthermore, even assuming that an unjustifiable delay has occurred, Defendants have not established that they have been prejudiced as a consequence. Without such prejudice, laches is inapplicable. Emle Industries, Inc. v. Patentex Inc. 478 F. 2d 562 (2d Cir. 1973); Pennsylvania Environmental Council, Inc. v. Bartlett, 315 F. Supp. 238 (M.D. Pa. 1970); Hicks v. Weaver, 302 F. Supp. 619 (E.D. La. 1969).

Finally, because the claims of LOCAFRANCE are "legal" (as opposed to equitable) as to which a specific statute of limitiations is applicable, the defense of laches cannot be asserted.

> "Laches is a doctrine peculiarly applicable to suits in equity, it does not operate to bar actions at law" (Footnotes Omitted) (36 N.Y. Jur., Limitations and Laches §154)

LOCAFRANCE's claims are based on the Securities Acts of 1933 and 1934, the New York General Obligations Law, common

law fraud and the negligence of the Defendants, as to each of which a specified statute of limitations exists. Consequently, these claims are legal and not equitable. Thus, in Appleton v. National Park Bank 211 A.D. 708, 714 (1st Dep't 1925), the court stated:

> "... laches, ... is no defense to an action at where the statute is commenced within the period fixed by the Statutute of Limitations."

Likewise, in De Atucha v. Manufacturers Trust Company 155 N.Y.S. 2d 537, 540 (Sup. Ct. N.Y. Co. 1956) the Court held:

> "The fifth defense and counterclaim are based on laches. They are not tenable here. The plaintiff's laches is no defense to an action at law and may not be interposed to defeat a recovery to which he is otherwise entitled." (Citations Omitted)

See also Polity v. Wabash R.R. Co. 207 N.Y. 113 (1912); and Girschowitz v. De Long, 51 N.Y.S. 2d 499 (Sup. Ct. N.Y. Co. 1944).

The doctrine of laches can therefore not be invoked to bar the claims of LOCAFRANCE. In the first instance, Defendants should be estopped from raising the defense. Furthermore, Defendants have failed to establish either unreasonable delays or resulting prejudice and, in any event, the "legal" nature of LOCAFRANCE's claims renders the equitable doctrine inapplicable.

POINT IX

LOCAFRANCE SHOULD NOT BE REQUIRED TO POST AN UNDERTAKING

Defendants argue that §11(e) of the Securities Act of 1933 (15 U.S.C. §77(k)(e)) requires LOCAFRANCE to post an undertaking in the instant case. In support of this contention, Defendants assert that "... this action is brought in violation of an accord and satisfaction." As indicated in Point I, infra, the fact that an accord and satisfaction was allegedly entered into between LOCAFRANCE and the Defendants is irrelevant to the merits of this action. Accordingly, the existence of an "accord and satisfaction" cannot require LOCAFRANCE to post an undertaking pursuant to § 11(e).

Defendants further argue that this action may require the incursion of substantial costs, thereby justifying an undertaking. Although this possibility exists for all parties in every litigation, it has never constituted justification for the extraordinary implementation of §11(e). In Acker v. Schulte 74 F. Supp. 683 (S.D.N.Y. 1947) the Court stated:

> "The claim that because defendants and their counsel will be compelled to devote much time and to expend considerable sums in preparation and in the trial of these actions, security for costs in sufficiently large amounts to cover these estimated expenses should be required, is without legal basis, in the absence of a clear showing of bad faith or lack of merit. The defendant in any lawsuit, no matter how baseless it may be, must incur the expense of defending it, or suffer judgment by default". 74 F. Supp. at. 690.

It is also urged that LOCAFRANCE's alleged delay in instituting this action is justification for requiring the posting of an undertaking. Aside from the fact that there has been no delay in instituting this action (Point VIII, supra), Defendants have offered no authority for the proposition that possible delay requires an undertaking.

It is further argued that all of the Defendants will have to retain counsel. Although it is obvious that all Defendants will be represented by present counsel, again no authority is offered in support of this alleged reason for the posting of an undertaking. Accordingly, there can be no merit to Defendant's contention that the number of parties is a factor in determining whether LOCAFRANCE should be required to post an undertaking.

Defendants seemingly refer to the prior action in Chicago, Illinois as another factor in determining the necessity of posting an undertaking. They omit to point out, however, that they instituted the Chicago action against LOCAFRANCE and another party and that the Chicago action involved completely different factual issues.

Finally, Defendants conclude by stating that because "there are numerous weaknesses in the Plaintiff's claim" and "Plaintiff's action does not appear to be meritorious" this Court should require LOCAFRANCE to post an undertaking. Where, as here, in the initial stages of the litigation, it would be impossible for this Court to pass upon the merits of the complaint and where Defendants have made no effort to demonstrate any lack of merit, Defendants' request for an undertaking is wholly inappropriate. New York Business Assistance Corporation v. Ross & Hirsch, CCH Fed Sec. L Rep. ¶91,534 (S.D.N.Y. 1965); Donlon Industries, Inc. v. Forte CCH Fed Sec. L Rep. ¶92,196 (S.D.N.Y. 1968).

In support of their arguments, Defendants rely primarily on Dabney v. Alleghany Corporation, 164 F. Supp. 28 (S.D.N.Y. 1958), which was a representative action by a stockholder challenging the legality of a proposed exchange

of different classes of preferred stock. Although the Court ultimately did require the posting of an undertaking, it was for reasons inapplicable to the present action.* The Court in Dabney , however, did state:

> It should perhaps be pointed out that to expect the Court to now determine whether a suit or defense is 'without merit', when the case has only been instituted, no answer has been filed, some of the defendants have not even been served, and no testimony has been taken, would impose an impossible burden upon the Court". (164 F. Supp. at 33).

A further point should be made regarding Defendants' apparent concern as to the costs and expenses of litigation. Among the arguments raised by Defendants in their motion to dismiss are (1) the failure to allege specific evidence of use of means or instrumentalities of interstate commerce, (2) the utilization of a "John Doe" designation to identify the actual name of the trustee of the trusts; (3) inadequate service of process by the United States Marshal as to certain Defendants, including the corporate Defendant; and (4) alleged objection to pendent jurisdiction.

* The reasons for the undertaking in Dabney included, (a) the claim therein involved issues previously decided against Plaintiff in a prior litigation; (b) the value of Plaintiff's stock was $800.00 and damages alleged were $5,000,000.00; and (c) the action on its face did not appear meritorious.

It is submitted that such frivilous and non-substantive arguments are inconsistent with a legitimate concern for the costs and expenses of litigation. Clearly, the intended policy of §11(e) was not to interfere with the ability of a plaintiff to seek justice but only to afford protection in wholly justifiable circumstances. Competitive Associates, Inc. v. International Health Sciences, Inc. CCH Fed. Sec. L. Rep. ¶ 93,632, (S.D.N.Y. 1972); Sargent v. Genesco, Inc. CCH Fed Sec. L. Rep. 93,357 (M.D. Fla., Tampa Div. 1972); Aid Auto Stores Inc. v. Cannon CCH Fed Sec. L.Rep. ¶ 95,247 (2d Cir. 1975).

The Defendants have failed to demonstrate any support for their position that LOCAFRANCE should be required to post an undertaking pursuant to §11(e).

POINT X

THE UNITED STATES MARSHAL IS IN THE PROCESS OF EFFECTING SERVICE UPON DEFENDANTS INTERMODAL, JOHN OVERMYER, EDWARD OVERMYER AND ELIZABETH OVERMYER

Assuming arguendo that the United States Marshal did not effect proper service upon Defendants INTERMODAL, JOHN OVERMYER, EDWARD OVERMYER and ELIZABETH OVERMYER, LOCAFRANCE has requested the Marshal to re-serve said Defendants. It should be noted that OVERMYER, the Chairman of the Board of INTERMODAL has already been properly served. In any event LOCAFRANCE has been advised by the Marshal that service will be effected by the return date of this motion.

CONCLUSION

Based upon all of the foregoing, it is respectfully requested that Defendants' motion be denied in all respects.

Respectfully Submitted,

REGAN GOLDFARB HELLER WETZLER & QUINN
ATTORNEYS FOR PLAINTIFF
445 Park Avenue
New York, New York 10022

OF COUNSEL:

Jan Atlas
Robert Aronson
John Conway

AFFIDAVIT OF JAN D. ATLAS IN OPPOSITION TO MOTION
(Filed November 5, 1976) (pp.205a-207a)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------X

LOCAFRANCE U.S. CORPORATION, :

Plaintiff, :

-against- : AFFIDAVIT

INTERMODAL SYSTEMS LEASING INC., et al.: 76 CIV. 2515 (CLB)

Defendants. :

----------X

STATE OF NEW YORK)
: SS.:
COUNTY OF NEW YORK)

JAN D. ATLAS, being duly sworn, deposes and says:

1. I am a member of the Bar of this Court and am associated with REGAN GOLDFARB HELLER WETZLER & QUINN, attorneys for Plaintiff LOCAFRANCE U.S. CORPORATION ("LOCAFRANCE"). I submit this affidavit in further opposition to Defendant's motion to dismiss the complaint.

2. It has become necessary to submit this affidavit in order to respond to matters not initially raised by Defendants' papers in support of their motion to dismiss and in order to respond to some confusion generated by the affidavit of Irwin Echtman, Esq. Defendants' attorney.

3. Despite Mr. Echtman's rather unprofessional and unwarranted attack on the credibility of PAUL SIEGE, Vice-President of LOCAFRANCE, the plain fact is that Mr. Echtman does

not deny that the Chicago action and the resultant settlement agreement dated June 18, 1974 did not involve, let alone resolve, any distinct issues relating to Defendants' fraudulent misrepresentations.

4. Mr. Echtman further attempts to create the impression that the term "liquidated damages agreement" contains some magical significance. The settlement agreement* reflected, (or was intended to reflect), a settlement of the Chicago action and what it may be called by LOCAFRANCE or by Defendants is wholly irrelevant. I believe Mr. Echtman is in agreement with that point.

5. Mr. Echtman further seeks to becloud Defendants' own motion by vague reference to actions instituted by LOCAFRANCE against third parties to recover certain monies due under sublease agreements. These actions (copies of the complaint of which were provided to Mr. Echtman as a matter of courtesy) were necessitated by Defendants' failure** to pursue collection of these monies, which monies, if collected, would eventually reduce Defendants' liability to LOCAFRANCE. In no way did this constitute what Mr. Echtman refers to as a ratification of an executed accord. As Mr. Echtman ought to be aware, there can be no executed accord in the absence of Defendants' satisfactory performance of the settlement agreement. It cannot be over-emphasized

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* Mr. Echtman has misstakenly referred to the settlement agreement of August 15, 1974. In fact, and as noted in his memorandum of law, the settlement agreement was dated June 18, 1974.

** In fact, as part of Defendants continuing fraud LOCAFRANCE is investigating the representation that DANIEL H. OVERMYER specifically induced these sub-lessees not to make any payments to LOCAFRANCE.

that at no point does Mr. Echtman dispute that the settlement agreement was never performed. In any event, clearly these baseless issues raised belatedly by Mr. Echtman are factual in nature and regardless of their relevancy, are not the proper subject of a motion to dismiss.

6. Mr. Echtman further argues that LOCAFRANCE should be required to post security under §11(e) of the Securities Act of 1933. Yet, apparently the sole reasoning is because LOCAFRANCE seeks to impose liability upon those persons, which, if the allegations of the complaint are proven true, should bear such liability. In his affidavits Mr. Echtman further fails to illuminate in his affidavit why Defendants will be unable to recover the costs of their defense. Yet, in his unsworn memorandum of law, he permits himself to state that LOCAFRANCE has no "continuity of existence".

7. Defendants' confusing and non-substantive attack on the complaint is without any basis and Defendants' motion should be denied so that pre-trial discovery may proceed.

JAN D. ATLAS

Sworn to before me this
20th day of October, 1976

Notary Public

LORRAINE C. GILLETTE
Notary Public, State of New York
No. 31-4510453
Qualified in New York County
Commission Expires March 30, 19 77

UNITED STATES DISTRICT COURT (Sworn to October 13, 1976)
SOUTHERN DISTRICT OF NEW YORK (pp. 208a-215a)

----------x

REPLY AFFIDAVIT

LOCAFRANCE U.S. CORPORATION,

Plaintiff,

-against-

INTERMODAL SYSTEMS LEASING, INC., et al.,

Defendants.

----------x

STATE OF NEW YORK)
) SS.:
COUNTY OF NEW YORK)

IRWIN M. ECHTMAN, being duly sworn, deposes and says:

I am a member of the firm of Easton & Echtman, P.C., attorneys for defendants INTERMODAL SYSTEMS LEASING, INC. ("ISLI"), DANIEL H. OVERMYER, SHIRLEY OVERMYER, JOHN OVERMYER, ELIZABETH OVERMYER, and EDWARD OVERMYER. I submit this affidavit in reply to the opposing affidavit of PAUL W. SIEGE. I have personal knowledge of the matters set forth below.

I represented ISLI in the hearings of the action it brought against LOCAFRANCE U.S. CORPORATION ("LOCAFRANCE") and ATLAS in the Cook County Court, State of Illinois, and I conducted the settlement negotiations on behalf of ISLI.

The amended verified complaint in that action, a copy of which is annexed hereto as Exhibit A, indicates quite clearly that the entire lessor-lessee relationship between ISLI and LOCAFRANCE was put in issue and that the immediate item of controversy was the reposession by LOCAFRANCE of all of the fork lift trucks leased to ISLI and their sale by LOCAFRANCE to ATLAS.

A copy of ATLAS's offer to purchase dated January 25, 1974 and LOCAFRANCE'S acceptance dated January 29, 1974 are annexed hereto as Exhibit B. These documents completely contradict the false sworn assertion by PAUL W. SIEGE (SIEGE affidavit p. 3) that when ISLI instituted action in Cook County, in the Spring of 1974, LOCAFRANCE was merely "investigating" ISLI'S financial posture. Uncontrovertedly, LOCAFRANCE had already siezed and sold its collateral under the first three agreements sued upon herein. As is his wont, Mr. Siege denied under oath in Illinois that he was negotiating a sale of the equipment to ATLAS as early as January, 1974. Only after the documentation annexed hereto as Exhibit B, was discovered, did Mr. Siege's memory begin to improve.

In discussions with Mr. Siege and his attorneys in Chicago, in the Spring of 1974, I was told repeatedly by them that they believed ISLI had submitted false financial statements and other documentation which contained false information. Thus, LOCAFRANCE was clearly aware of any and all claimed false statements as early as the Spring of 1974, and probably even earlier than that. To the same effect see Mr. Byrne's memo, attached to Mr. Raible's affidavit as Exhibit D.

More than one year having elapsed between such discovery by LOCAFRANCE and the institution of this action, it is clear that defendants' statute of limitations argument should be upheld.

Mr. Siege in his affidavit has sought to recast the August 15, 1974 settlement agreement as a "liquidated damages" agreement. (Siege affidavit p. 4 footnote; plaintiff's memorandum pp. 2,3,13,28,29,31). It is even difficult for plaintiff itself

to absorb this enormous neologism, for plaintiff frequently reverts to calling the agreement a "settlement agreement." (Affidavit of Paul W. Siege pp. 4,5,6; plaintiff's memorandum at 11, 13, 31).

Thus, plaintiff would have the court believe the document which was once a "settlement agreement" is now a "liquidated damages agreement". The fact is that the agreement speaks for itself and refutes plaintiff's inventive terminology.

Mr. Siege's assertion that the suit in Illinois brought by ISLI "had nothing to do with the present matter" (Siege affidavit p. 1), is belied by the settlement agreement itself, plaintiff's own factual narrative, and the pleadings in the Illinois action.

Pursuant to the settlement agreement ISLI relinquished its right to the bulk of the fork lift trucks previously leased to it by Locafrance. ISLI retained approximately 33 trucks on new leases. ISLI then sublet these 33 trucks to the individual warehouse corporations. The subleases between ISLI and the local warehouse corporations provided that a default by ISLI pursuant to the terms of ISLI's August 15, 1974 agreement with Locafrance was to constitute a default by the local warehouse corporation under the terms of its sublease. A sample copy is annexed hereto as Exhibit C.

Several months before instituting this action, Locafrance commenced a series of actions against the local warehouse corporations alleging that the total balances under those subleases were now due to LOCAFRANCE, even though LOCAFRANCE was not a direct party to the subleases. Thus, LOCAFRANCE brought suit

pursuant to the provisions of the August 15, 1974 settlement agreement, giving it rights under those subleases as security for the performance by ISLI of its obligations under that August 15, 1974 settlement agreement. Copies of some of these complaints by LOCAFRANCE are annexed hereto as Exhibit D.

By suing the local warehouse corporations, LOCAFRANCE exercised rights which it did not have prior to the August 15, 1974 settlement agreement. It has thus treated the August 15, 1974 agreement as an executed accord and has affirmed and ratified it as an executed accord. The institution of these actions (LOCAFRANCE has already entered judgment in two of them) prevents LOCAFRANCE from disregarding the August 15, 1974 settlement agreement and attempting to sue herein under its 1972 and 1973 agreements with ISLI, which have now been superseded.

Indeed, if LOCAFRANCE were to be consistent in its position that it can bring a Securities action under the 1972 and 1973 agreements with ISLI, then LOCAFRANCE would have to return to ISLI the 230+ fork lift trucks that it took from ISLI and sold to ATLAS.

In the face of these undisputable facts, LOCAFRANCE should not be heard to complain that its August 15, 1974 agreement was not a full accord and satisfaction. Indeed, LOCAFRANCE'S contention flies in the face of

a) the unconditional general release it gave to ISLI,

b) its settlement of the litigation with ISLI,

c) its sale of the fork lift trucks to ATLAS,

d) its commencement of actions against local warehouse corporations pursuant to the August 15, 1974 settlement

agreement and

e) its entry of judgment against at least two of those local warehouse corporations.

LOCAFRANCE'S claim to a Securities action with respect to the August 15, 1974 agreement represents a situation markedly different from the 1972 and 1973 agreements. In 1974, LOCAFRANCE made no new monetary advances to ISLI whatever. No new equipment was supplied. All that LOCAFRANCE did was to settle the litigation instituted by ISLI demanding return of all of the repossessed fork lift trucks. Thus, there was no sale of securities and no transaction which could bring in to play the Securities laws.

Obviously, none of this litigation falls within the ambit of the usual Securities Act litigation, involving a public offering and involving the sale of a readily recognizable security. Defendants have not strongly argued these points at this time with respect to the 1972 and 1973 agreement but reserve their rights to do so at a later time. However, since in 1974 there was no sale of a security, the action should be dismissed with respect to allegations of false statements which allegedly induced LOCAFRANCE to enter into the August 15, 1974 agreement. Significantly, LOCAFRANCE has not particularized a single such allegation.

Noteworthy in this connection is Mr. Siege's sworn statement that "from the very beginning there were continuous defaults under the settlement agreement unrelated even to the payment of money." (Siege affidavit p. 5) What defaults? Siege is silent! Contrast this with the statements in LOCAFRANCE'S

memorandum of law that no duty of performance under the settlement agreement arose for a period of one year (Plainitiff's memorandum pp. 30, 31)

Plaintiff's argument that deponent refused to disclose the name of the trustee, sued herein as John Doe (Plaintiff's memorandum pp. 3, 31), is not well taken, since plaintiff did not request the information from deponent until after the present motion to dismiss had been made.

This court, in the exercise of its discretion, should require plaintiff to post security in the sum of $300,000, to protect the defendants against costs, including attorneys fees. Plaintiff has taken what is basically a contract action between plaintiff and ISLI, and is attempting, without justification, to convert it into a Securities action. Plaintiff is thereby attempting to obtain a judgment not only against the parties with whom it contracted, but also against a former officer of that corporation, his wife, and his children.

One of the purposes of a corporate structure is to protect the individuals from liability. Plaintiff knew full well it was dealing with a corporation. If plaintiff wanted to impose liability upon the individuals, it should have demanded personal guarantees, including those of the 12 and 14 year olds it has made parties to this action.

Plaintiff is not unsophisticated. Notwithstanding its attempts herein to portray itself as a poor unfortunate, plaintiff is and has been a money lender whose base of operations is in France.

Plaintiff should be required to post substantial security for costs. If defendants are successful, as I believe that they will be, they may be unable to recover the costs of their defense. Worse still, without the existence of a fund from which to recover such costs, defendants may be unable to obtain an adequate defense.

Plaintiff's attorney has already advised me that he is in the process of having the infant defendants served anew. Clearly they will be required to defend. It is not known whether deponent's firm will take on their defense or whether a guardian ad litem will engage other counsel. In any event, the costs of that defense, in a Securities action, will necessarily be geometrically higher than the costs of defending a simple contract action.

Legal fees would be among recoverable costs, since the Securities acts make specific provision therefor. Thus, plaintiff's argument that legal fees would not be recoverable is not well taken.

It is precisely because of plaintiff's attempts to convert a contract action into a Securities action; to avoid the effect of its August 15, 1974 settlement agreement; to disregard its inconsistent actions brought against the local warehouse corporations; to bring an action against people who obviously had nothing whatever to do with the alleged securities transactions herein and who are incapable of even understanding them, that plaintiff should be required to post substantial security.

WHEREOFRE, it is respectfully requested that the

complaint herein be dismissed in its entirety, or in the alternative against certain of the defendants in its entirety or in part, and that in the event this action is to continue, plaintiff be required to post $300,000 security for costs.

s/ Irwin M. Echtman

IRWIN M. ECHTMAN

Sworn to before me this

13th day of October, 1976.

BRUCE W. HESSELBACH
Notary Public, State of New York
No. 41-4626871
Qualified in Queens County
Term Expires March 30, 1978

EXHIBITS ANNEXED TO FOREGOING AFFIDAVIT

STATE OF ILLINOIS)
) SS
COUNTY OF C O O K)

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT - CHANCERY DIVISION

INTERMODAL SYSTEMS LEASING INC., (a/k/a INTERMODAL LEASING SERVICES, INC.),	)	
Plaintiff	)	
v.	)	NO. 74 CH 1972
ATLAS FORKLIFT TRUCK RENTAL AND SALES, INC. and LOCAFRANCE U.S. CORPORATION,	)	
Defendants.	)	

AMENDED VERIFIED COMPLAINT FOR INJUNCTION

Plaintiff by its attorneys, LORD, BISSELL, and BROOK, complaining of defendants, alleges as follows:

COUNT I

1. At all times hereinafter mentioned, plaintiff hereinafter referred to as "INTERMODAL", is a business corporation organized and existing under the laws of the State of Delaware with its principal place of business in New York City, New York.

2. Plaintiff is fully authorized and qualified to transact business under the laws of the State of Illinois and does, in fact, transact business in Illinois.

3. At all times hereinafter mentioned, defendant ATLAS FORKLIFT TRUCK RENTAL and SALES INC., hereinafter referred to as "ATLAS", is, upon information and belief, a business corporation, organized and existing under the laws of the State of Illinois, with its principal place of business located in Cook County, State of Illinois.

4. At all times hereinafter mentioned defendant LOCAFRANCE U.S. CORPORATION is a business corporation, organized and existing under the laws of the State of Delaware, and that said defendant transacts business in the State of New York and the State of Illinois.

5. Plaintiff INTERMODAL is in the business of leasing fork-lift trucks and other equipment to lessees for the purpose of maintenance of warehouse operations.

6. The aforesaid fork-lift trucks mainly consist of "Gradmast" types which have the capacity to store, lift and otherwise move about a total of five thousand (5,000) pounds of material.

7. There is a severe shortage of the aforesaid fork-lift trucks in the current warehouse market, and that the shortage of trucks renders ownership and leasing rights to these trucks highly valuable and irreplaceable, ... further, that the severe shortage in the current market makes these fork-lift trucks unique, irreplaceable and highly valuable chattels.

8. Plaintiff originally purchased these fork-lift trucks and, in 1972-1973 entered into a financing transaction, commonly classified as "sale-leaseback" with defendant LOCAFRANCE.

9. Pursuant to the aforesaid transaction, plaintiff leased most but not all of these trucks and made periodic monthly payments to defendant LOCAFRANCE in return for moneys advanced to plaintiff.

10. In or about December, 1973, plaintiff entered into agreements, as part of a new business venture, with various corporations organized under the laws of various States of the United States, and that said corporations are directed and managed by individuals who are former warehouse operations managers.

11. Pursuant to the general plan of said business venture, the aforesaid corporations were to sign leases with plaintiff for rental of fork-lift equipment.

12. Prior to the actual signing of the leases, the aforesaid corporations were to, and actually did engage in renting fork-lift equipment on a month to month basis.

13. The managers, executives and directors of the aforesaid corporations, as former warehouse managerial personnel, had engaged in business dealings in the form of rental of fork-lift trucks, and other equipment necessary to the maintenance of a warehouse with plaintiff and its corporate predecessors, and that their commercial dealings with respect to equipment rental were almost exclusively effectuated with plaintiff.

14. The aforesaid warehouse management corporations constitute the entire clientele and rental market for plaintiff's fork-lift trucks and other warehouse equipment, and as such, the aforesaid warehouse management corporations constitute a "customers list" of clientele which has been gathered and services by plaintiff over a period of many years.

15. Defendant LOCAFRANCE conspired and entered into an unlawful agreement with defendant ATLAS wherein they sought to deprive plaintiff of his customers' list and clientele, wrongfully and unlawfully misappropriate plaintiff's customers and clientele to themselves and thereby destroy plaintiff's new business venture.

16. The aforesaid conspiracty and corrupt agreement was, and is currently being, put into effect by means of defendants' wrongfully and unlawfully utilizing the services of a former agent of plaintiff's, one WILLIAM A. HILL, hereinafter referred to as "HILL" who is wrongfully and unlawfully acting in concert with one GLEN KIRSCH, hereinafter referred to as "KIRSCH" a Vice President of defendant ATLAS in traveling to, telephoning and otherwise communicating with plaintiff's clientele and customers and falsely relating to them that defendant ATLAS has full right, title and interest to fork-lift trucks which, in truth and fact, belong to plaintiff for the purpose of entering into leasehold contracts.

17. The aforesaid "HILL" is now in the ostensible employ of defendant LOCAFRANCE and is wrongfully and unlawfully utilizing information with respect to plaintiff's inventory, customers, and clientele in that said information was obtained when HILL was an agent for plaintiff and was thereby acting in a fiduciary capacity for plaintiff.

18. The actions in concert by HILL and KIRSCH have taken the form of threats against plaintiff's executives and personnel, as well as threats against plaintiff's customers and clientele.

19. In or about late December of 1973 and January, 1974, PAUL SIEGE, hereinafter referred to as SIEGE, a Vice President of defendant LOCAFRANCE agreed to act as plaintiff's agent in signing its customers to leases for rental of fork-lift trucks for the ostensible purpose of protecting defendant LOCAFRANCE'S investment by providing a cash flow to plaintiff so that periodic monthly payments would be made to defendant LOCAFRANCE.

20. As agent for plaintiff, defendant LOCAFRANCE through its officer SIEGE owed plaintiff a fiduciary duty to use its best efforts for the advancement and protection of plaintiff's business enterprise.

21. Defendant LOCAFRANCE, by utilizing the services and knowledge of HILL to solicit plaintiff's clientele and customers on behalf of defendant ATLAS violated that fiduciary duty.

22. The actions in concert of ATLAS and LOCAFRANCE are likely to 219a
inflict immediate and irreparable ruin upon plaintiff's new business venture if said actions are not enjoined by a Court of Equity.

23. Plaintiff has no remedy at law in that an award of damages cannot serve to compensate plaintiff for the destruction of a new business enterprise.

WHEREFORE: Plaintiff prays the Court to enter a permanent injunction enjoining and restraining defendant ATLAS from soliciting plaintiff's customers and clientele for equipment rental, and representing to said customers and clientele that it has title to or leasing rights in said equipment, and further, plaintiff prays for entry of an injunction, pendente lite, because of the grave threat of imminent ruin to plaintiff's new business venture by the aforesaid course of conduct, and for such further relief as the Court deems just and equitable.

COUNT II

24. Plaintiff repeats and restates each and every allegation set forth in paragraphs "1" through "24" inclusive with the same force and effect as if separately set forth at length herein.

25. In addition to unlawfully soliciting plaintiff's customers, defendant ATLAS has been threatening to effectuate and in some cases has in fact effectuated a unlawful physical seizure of defendants fork-lift trucks, including not only trucks financed by defendant LOCAFRANCE but other trucks in which LOCAFRANCE has no interest, and that said course of conduct would inflict irreparable injury upon plaintiff's new business venture in that it would result in the complete and irretrievable loss of unique equipment which plaintiff is now leasing to the aforesaid warehouse management companies.

26. Plaintiff has no adequate remedy at law in that the loss of fork-lift equipment cannot be replaced, and would cause a complete destruction of p tiff's new business enterprise.

WHEREFORE: Plaintiff prays the court to enter a permanent injunction enjoining and restraining defendant ATLAS from physically seizing fork-lift equipment, or working in concert or connection with any other individually or business enterprise in effectuating a physical seizsure of the fork-lift equipment, and further plaintiff prays for entry of an injunction, pendente lite, because of the grave threat of imminent ruin to plaintiff's new business venture by the aforesaid course of conduct, and for such further relief as the Court deems just and equitable.

COUNT III

27. Plaintiff repeats and restates each and every alle,ation contained in paragraphs "1" through "27", inclusive, with the same force and effect as if separately set forth at length herein.

28. Defendant LOCAFRANCE through its Vice President, SIEGE, obtained a release contract from plaintiff at the same time that LOCAFRANCE was acting in a fiduciary capacity to plaintiff as its agent. By the terms of the agreement between SIEGE and plaintiff's Chairman of the Board and Chief Executive Officer and plaintiff's General Counsel, said release contract which provided for immediate repossession rights for the benefit of defendant LOCAFRANCE, was entered into for the sole purpose of reassuring defendant's financiers and would not be used to repossess fork-lift trucks or other equipment covered by said leases while plaintiff was operating its business ventures.

29. Defendant LOCAFRANCE has violated the agreement as to the use and function of the release-contract, and has attempted to transfer said fork-lift equipment to defendant ATLAS and that the two defendants are now attempting to violate the agreement as to limitations on the function, use and purpose of said agreement, by attempting to repossess said equipment.

30. The release-contract has been used to effectuate an unlawful purpose in agreement between defendant LOCAFRANCE and defendant ATLAS in allegedly passing title and leasing rights to defendant ATLAS which is an Illinois corporation.

31. The release contract is void for want of consideration in that by the terms thereof, plaintiff relinquishes valuable possessory rights of redemption while receiving no waiver of or relinquishment in contractural rights against plaintiff by defendant LOCAFRANCE.

32. Because of the actions of both defendants there are now conflicting claims of ownership and leasing rights to approximately two hundred and seventy-six

(276) fork-lift trucks, and that the lessees of the fork-lift equipment 221a
are now thoroughly confused as to which party they are obliged to pay rentals to.

WHEREFORE: Plaintiff prays for a judgment declaring its possessory and leasing rights in the fork-lift trucks in order to stabilize relations with its customers and clientele and for a determination as to the conflicting claims of leasing rights in said fork-lift equipment, and further prays for a declaration that said release is null and void and of no effect, and for such further relief as the Court deems just and equitable.

COUNT IV

33. Plaintiff repeats and restates each and every allegation contained in Paragraphs "1" through "33" inclusive, with the same force and effect as if separately set forth at length herein.

WHEREFORE: Plaintiff prays for a judgment declaring that the course of conduct of Defendants LOCAFRANCE and ATLAS has been such as to estop it from utilizing the alleged release-contract to pass title or leasing rights to said fork-lift equipment and plaintiff further prays for such further relief as the Court deems just and equitable.

COUNT V

34. Plaintiff repeats and restates each and every allegation contained in Paragraphs "1" through "34", with the same force and effect as if fully set forth at length herein.

35. Plaintiff and defendant LOCAFRANCE entered into an agency-principal fiduciary relationship with Defendant LOCAFRANCE and that said Defendant was to use its best efforts to lease the fork-lift trucks for the commercial benefit of Plaintiff in order to accelerate plaintiff's business venture and protect LOCAFRANCE'S security interest and return on capital in said fork-lift equipment.

36. The alleged release-contract was executed only in furtherance of the agency and said fork-lift equipment was to be used for the benefit of Plaintiff.

WHEREFORE: Plaintiff prays for entry of a judgment declaring an express trust for the benefit of Plaintiff upon said fork-lift equipment.

COUNT VI

37. Plaintiff repeats and restates each and every allegation contained in paragraphs "1" through "25" inclusive with the same force and effect as if separately set forth at length herein.

38. Prior to the execution of the "leases" between INTERMODAL and defendant LOCAFRANCE, INTERMODAL, or its corporate predecessor, purchased each and every fork-lift truck and had title to each and every fork-lift truck.

39. Thereafter, plaintiff and defendant LOCAFRANCE entered into an agreement entitled "contract of sale" and said defendant paid a sum certain to plaintiff.

40. Concurrently with the execution of the purported "contract of sale", with defendant LOCAFRANCE as purported "purchaser" and plaintiff as purported "seller", the said parties entered into purported "leases" for "rental" to plaintiff of fork-lift trucks and other equipment.

41. Pursuant to the alleged "leases", plaintiff has full power and control over said equipment with regard to disposal, sub-rental, and placement of the fork-lift trucks and is otherwise vested with all incidents of ownership of the subject fork-lift trucks except for the base fee title thereto and plaintiff is responsible for all maintenance, insurance and other costs and responsibility for said fork-lift trucks.

42. It was understood and agreed to and by the parties that the subject transaction was, in fact and substance a financing transaction for the purpose of extending credit to plaintiff and that at the termination of the alleged "lease", plaintiff had the right to repurchase said fork-lift equipment for the base, token sum of one ($1.00) dollar.

WHEREFORE: Plaintiff prays for entry of a judgment declaring that the aforesaid "sale-leaseback" transactions are in fact, and one to be viewed in Equity as a disguised security transaction and that the true relationship between the parties is that of lender-borrower rather than vendor-vendee, and plaintiff is further entitled to a judgment declaring that the aforementioned "sale-leaseback" transactions are in fact, law and equity, chattel mortgages, giving plaintiff full rights of a mortgagor under the laws of the State of Illinois, and New York, such as rights of redemption and right to cure a default in periodic payment.

COUNT VII

43. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1 through 7 inclusive and through 14 inclusive with the same force and effect as if separately set forth at length herein.

44. Plaintiff originally purchased these fork-lift trucks and, from time to time has entered into financing contracts commonly classified as "sale-leaseback" agreements with defendant LOCAFRANCE as well as with certain other lenders including G. E. Credit and Hyster.

45. Defendant ATLAS by and through its agent and Vice-President GLEN KIRSCH, well knowing the contractual relationship between plaintiff and said lenders other than LOCAFRANCE, has wrongfully and tortiously attempted to interfere with plaintiff's contractual relationship with said other lenders and has attempted to induce said other lenders to cease doing business with plaintiff and to sell plaintiff's fork-lift trucks to defendant ATLAS.

46. Said course of conduct by ATLAS and KIRSCH, if successful, will inflict irreparable injury upon plaintiff's new business venture in that it will result in the complete and irretrevable loss of unique equipment which plaintiff is now leasing to the aforesaid warehouse management companies.

47. Plaintiff has no adequate remedy at law in that the loss of fork-lift equipment cannot be replaced, and would cause a complete destruction of plaintiff's new business enterprise.

WHEREFORE: Plaintiff prays the Court to enter a permanent injunction enjoining and restraining defendant ATLAS from offering to purchase fork-lift truck equipment financed by plaintiff under sale-leaseback financing agreements from the lenders under said agreements and from otherwise soliciting and encouraging said lenders to cease doing business with the plaintiff, and further plaintiff prays for the entry of an injunction pendente lite, because of the grave threat of imminent ruin to plaintiff's new business venture by the aforesaid course of conduct, and for such further relief as the Court deems just and equitable.

LORD, BISSELL & BROOK
Attorneys for Intermodal Leasing Services, Inc., Plaintiff herein

135 South LaSalle Street
Chicago, Illinois 60603

786-6237

VERIFICATION

STATE OF ILLINOIS)
)
COUNTY OF COOK)

CHARLES CARROLL, being duly sworn, deposes and says that deponent is the General Manager of the plaintiff corporation, INTERMODAL SYSTEMS LEASING, INC.; that deponent has read the foregoing complaint and knows the contents thereof; and that the same are true to deponent's own knowledge, except as to the matters therein stated to be alleged upon information and belief, and as to those matters deponent believes them to be true.

_____
CHARLES CARROLL

SUBSCRIBED and SWORN to before me
this _____ day of _____, 1974.

_____
NOTARY PUBLIC

STATE OF ILLINOIS)
) SS
COUNTY OF C O O K)

Don W. Fowler, an attorney, hereby certifies that he personally served a copy of the above and foregoing Amended Verified Complaint for Injunction by delivering the same to Lawrence to Lawrence J. West, attorney for defendant Atlas Forklift Truck Rental and Sales, Inc. and Edmund W. Sinnott, attorney for defendant Locafrance U. S. Corporation on this 21st day of May, 1974.

EXHIBIT B - ATLAS OFFER TO PURCHASE DATED JANUARY 25, 1974 AND LOCOFRANCE'S ACCEPTANCE DATED JANUARY 29, 1974 (pp. 226a-229a)

PURCHASE ORDER

PAGE 1 OF 3

ATLAS®

LIFT TRUCK RENTALS & SALES, INC.

5050 NORTH RIVER ROAD • SCHILLER PARK, ILLINOIS 60176 (Chicago Suburb)

Telephone: Area Code 312 678-3450 • CABLE "ATLASLIFT" • TWX 910-227-0065

"THE NAME THAT CARRIES WEIGHT"

THIS NUMBER MUST APPEAR ON ALL INVOICES, SHIPPING PAPERS, AND CORRESPONDENCE.

№ 10426

1/25/74

SHIPPING INSTRUCTIONS

TO LOCAFRANCE U.S. CORPORATION
919 THIRD AVENUE
NEW YORK, NEW YORK 10022

ATTN. MR PAUL SEIGE V.P.

JAN.	DESCRIPTION	AMOUNT
	THIS PURCHASE ORDER COVERS THE 274 TRUCKS IN THE ATTACHED 9 PAGES.	
	42 HYSTERS WITH SERIAL NUMBERS ENDING IN "P"	$189,000.0
	185 MISC: TRUCKS (NOT THOSE REFERRED TO ABOVE OR BELOW)	376,000.0
	47 TRUCKS LISTED BELOW (SEE LIST A)	35,000.0
AL	274	$600,000.0

CONTINUED ON PAGE - 2 -

FOR RESALE
653-088

GLEN A. KIRSCH.

DTE: WE CANNOT ACCEPT MACHINES DAMAGED BY FREEZING

BY _____

PURCHASE ORDER

PAGE 2 OF 3

10426

THIS NUMBER MUST APPEAR ON ALL INVOICES, SHIPPING PAPERS, AND CORRESPONDENCE.

ATLAS®

LIFT TRUCK RENTALS & SALES, INC.

"THE NAME THAT CARRIES WEIGHT"

5050 NORTH RIVER ROAD • SCHILLER PARK, ILLINOIS 60176 (Chicago Suburb)

Telephone: Area Code 312 678-3450 • CABLE "ATLASLIFT" • TWX 910-227-0065

1/25/74

SHIPPING INSTRUCTIONS

TO LOCAFRANCE U.S. CORPORATION
919 THIRD AVENUE
NEW YORK, NEW YORK 10022

NO.	DESCRIPTION	AMOUNT
1	WE UNDERSTAND THAT THE LIFT TRUCKS ARE POWERED BY GASOLINE OR L.P.G., AND ARE GENERALLY IN FAIR TO GOOD OPERATING CONDITION.	
2	IF ANY OF THE TRUCKS, NOT INCLUDING LIST A, ARE NOT QUAD MASTS DEDUCT $1000.00 EACH. IF ANY TRUCKS ARE AUTOMATIC TRANSMISSION INCLUDING LIST A, DEDUCT $300.00 EACH.	
3	WE RESERVE THE RIGHT TO GET OUR MONEY BACK SHOULD WE HAVE ANY PROBLEM OBTAINING CLEAR TITLE and possession.	
4	WE EXPECT TO BE INVOICED, IN TOTAL, UPON MUTUAL ACCEPTANCE. WE WILL PAY AGAINST INDIVIDUAL INVOICES AS WE EITHER PICK UP, OR ACCEPT ON LOCATION.	

CONTINUED ON PAGE - 3 -

FOR RESALE
653-088

TE: WE CANNOT ACCEPT MACHINES DAMAGED BY FREEZING

BY _____

PURCHASE ORDER

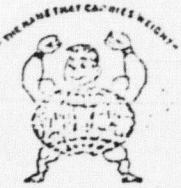
ATLAS®

PAGE 3 OF 3

10426

THIS NUMBER MUST APPEAR ON ALL INVOICES, SHIPPING PAPERS, AND CORRESPONDENCE.

LIFT TRUCK RENTALS & SALES, INC.



5050 NORTH RIVER ROAD • SCHILLER PARK, ILLINOIS 60176 (Chicago Suburb)

Telephone: Area Code 312 678-3450 • CABLE "ATLASLIFT" • TWX 910 227-0065

1/25/74

SHIPPING INSTRUCTIONS

TO LOCAFRANCE U.S. CORPORATION
919 THIRD AVENUE
NEW YORK, NEW YORK 10022

LIST A.

...N.	DESCRIPTION					AMOUNT
	42250568	$1200.00	127-368	$1200.00	C258544462312	$1200.00
	5048167	200.00	173-630	1400.00	2L5 15000	800.00
	42250860	1200.00	869-563	1200.00	51701	500.00
	ADC47741	600.00	1239-1160	1000.00	C208526462362	1000.00
	500510019	500.00	46-128	500.00	C208524462362	1000.00
	CE55EA132	400.00	AT 40U	500.00	CEC3655711263	700.00
	AH099805	500.00	46052695	400.00	AJ 128157	1400.00
	T3474436	200.00	422505070	1200.00	CE199K099	400.00
	54257	500.00	CEC2204C	400.00	AH112503	500.00
	808814	500.00	CEC145-211	400.00	531553106	1200.00
	C30392-9846	500.00	CF25254RR11	400.00	4115660048	300.00
	FGD050	500.00	CE100EK181	400.00	4464621161	800.00
	26101527	1500.00	CE13LP1101131	400.00		
	CA0102918	1200.00	LPG203443	400.00		
	C408497688	1200.00	CE121RT77	400.00		
	AUTO 31728	200.00	P161101	2000.00		
	42250569	500.00	1639-7000	400.00		
	4J-1265	1200.00				

FOR RESALE
653-088

...TE: WE CANNOT ACCEPT MACHINES DAMAGED BY FREEZING

BY Eleanor Kunick

229a

Intermodal
X 14 ID

Locafrance U.S. Corporation
919 Third Avenue New York, N.Y. 10022 (212 832 2830 Telex 12451

January 29, 1974

Mr. Glen A. Kirsch
Vice President
Atlas Lift Truck Rentals & Sales, Inc.
5050 N. River Road
Schiller, Illinois 60176

Dear Mr. Kirsch:

We hereby accept your purchase order annexed hereto subject to the following terms and conditions:

(1) You agree that you will remove all of the equipment on a particular location which is covered by your purchase order.

(2) Upon your recovering possession of the equipment you will advise us, at which time we will invoice you according to the price set forth on your annexed purchase order.

(3) Upon your receipt of our invoice you will make payment for the equipment covered by the invoice, at which time a bill of sale transferring all the right, title and interest of Locafrance to that equipment will be delivered to you.

(4) In the event any piece of equipment that has been removed from a location does not meet the standards set forth in your purchase order, and no agreement can be reached between us on an alternative value for such piece of equipment, you agree, at your expense, to transport the same to your warehouse located in Chicago, Illinois, or to such other location where you hold your property where we will have free access to the equipment you are holding for us, and to hold the same at no cost or expense to Locafrance subject to shipping instructions that may subsequently be given by Locafrance.

(5) This will acknowledge receipt of your down payment of $25,000 for the purchase of the equipment covered by your purchase order. It is agreed that said down payment shall be applied to the last pieces of equipment for which you will be separately invoiced.

Very truly yours,

Jean Vidal
Secretary-Treasurer

JV:fg

Acknowledged By
W. Kirsch, President

EXHIBIT C - SAMPLE COPY OF SUBLEASE BETWEEN ISLI AND LOCAL WAREHOUSE (pp. 230a-236a)

SU[illegible] No. 052/32/000 K [illegible]

Commitment to [illegible]

NAME AND ADDRESS OF ~~LESSOR~~ SUBLESSOR:
[illegible]ermodal Systems Leasing, Inc.
[illegible] West 34th Street
[illegible]w York, New York 10001
Incorporated in State of Delaware

NAME AND ADDRESS OF ~~LESSEE~~ SUBLESSEE:
Kas-Dus Warehouse
4700 Deramus Avenue
Kansas City, Missouri 64116
Incorporated in State of: Missouri

DESCRIPTION			
Towmotor Forklift	392S	670059	
"	502S	660004	
"	502S	670307	

LOCATION OF EQUIPMENT: STREET: 4700 Deramus Avenue; CITY: Kansas City; COUNTY: Clay; STATE: Missouri

RENTAL COMMENCEMENT DATE: [illegible]

BASE TERM OF LEASE:	PERIOD	NUMBER OF RENTALS	AMOUNT OF EACH RENTAL	SALES TAXES	TOTAL	AMOUNT OF SECURITY DEPOSIT
[illegible] Months	36 Months	36	$450.00	$13.50	$463.50	$ —
RENTALS PAYABLE MONTHLY ☒ QUARTERLY ☐						ADVANCE RENTAL(S) $463.50 REPRESENTING PAYMENT FOR THE 1st RENTAL[illegible] PAYABLE AT THE SIGNING OF THIS LEASE
Renewal Rental Payable Annually In Advance						

Section 1. LEASE. Lessor hereby leases to Lessee, and Lessee hereby rents from Lessor, subject to the terms, conditions and rents hereinafter set forth, the personal property listed above, or [illegible]ecifically scheduled, in the schedule attached hereto, made a part hereof and marked Schedule "A" (collectively with all replacements parts, additions, repairs and accessories incorporated and/or affixed [illegible] (the "Equipment"). It is understood that this Lease shall be effective and binding upon Lessor only when executed by Lessor ("Commitment Date") and that the term of this lease shall [illegible]ence upon [illegible] (the "Rental Commencement Date").

Section 2. SELECTION AND ORDERING OF EQUIPMENT. Lessee has requested equipment of the type and quantity specified above or in the Schedule A attached [illegible] and ac-

representation as to Equipment or any other matter as ——— shall in any way affect Lessee's duty to pay the rent and perform its other obligations as set forth in this Lease.

Section 3. NO WARRANTIES BY LESSOR. Lessee acknowledges that Lessor, Lessor's successor, or Lessor's assignee is not the manufacturer of the Equipment, the agent of the manufacturer nor the distributor thereof and that Lessee has selected ——— the Equipment leased hereunder prior to having requested the Lessor to purchase it for leasing to the Lessee ———. LESSEE ALSO ACKNOWLEDGES THAT LESSOR HAS MADE AND MAKES NO WARRANTIES OR REPRESENTATIONS OF WHATSOEVER NATURE DIRECT OR INDIRECT, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, AS TO THE SUITABILITY, DURABILITY, FITNESS FOR USE, MERCHANTABILITY, DESIGN OR CONDITION OF, OR AS TO THE QUALITY OR CAPACITY OF THE MATERIAL, OR WORKMANSHIP, OR MARKETABILITY, QUALITY OR OTHERWISE OF THE EQUIPMENT, OR OF THE ABILITY OF THE SUPPLIER TO PERFORM, OR THAT THE EQUIPMENT WILL SATISFY THE REQUIREMENTS OF ANY LAW, RULE, SPECIFICATION OR CONTRACT WHICH PROVIDES FOR SPECIFIC DELIVERY OR OPERATORS OR SPECIAL METHODS, IT BEING AGREED THAT ALL SUCH RISKS, AS BETWEEN LESSOR AND LESSEE, ARE TO BE BORNE BY LESSEE AT ITS SOLE RISK AND EXPENSE. Lessee specifically waives all rights of any kind to make a claim against the Lessor, Lessor's successor or Lessor's assignee herein for breach of any warranty of any kind whatsoever.

Section 4. ASSUMPTION OF ALL RISK BY LESSEE. Inasmuch as Lessee has selected both the Equipment ——— and has agreed to assume all risk of loss resulting from the ——— for any reason whatsoever (including force majeure), it is understood and agreed that Lessee irrevocably waives any claim against Lessor for any loss or damage resulting from any cause, circumstance or event of whatsoever nature including but not limited to, failure of or delay in delivery, delivery to the wrong place, delivery of improper Equipment, defect to the Equipment, defect or unfitness of the Equipment or the installation of the same, governmental regulation, Act of God, strike, embargo or any other cause, circumstances, whether of like or unlike nature and, in connection therewith, Lessee agrees that any of the same shall not relieve Lessee of the obligations to pay rent or of any other obligation under this Lease. Lessor, Lessor's successor or Lessor's assignee, shall have no obligation to install, erect, test, adjust or service the Equipment. Lessee shall, at its own cost and expense; (a) pay all charges and expenses in connection with the operation of all Equipment (b); comply with all laws, ordinances, regulations, requirements and rules with respect to the use, maintenance and operation of the Equipment; (c) make all repairs and replacements required to be made to maintain the Equipment in good condition, reasonable wear and tear excepted.

Section 5. INSPECTION. Upon delivery of the Equipment, Lessee agrees to take any and all such action, including without limiting the generality of the foregoing, alterations or modifications, structural or otherwise, to the premises in which the Equipment shall be located. Lessee shall inspect the Equipment within eight (8) business days after its arrival at the address set forth above, and if in good working order and repair and to accept the Equipment by executing and delivering to Lessor a dated notice of receipt in the form annexed hereto and labeled "Delivery Acceptance Receipt". Lessee hereby authorizes Lessor to insert in this Lease the serial numbers and other identification data of each item of Equipment as delivered. If, Lessee shall determine that the Equipment is not in good working order and repair it within such eight day period, shall notify Lessor a written notice specifying the defect or other objection to the Equipment and stating that it is rejecting the Equipment. In the event that Lessee gives the written notice referred to in the immediately preceding sentence, Lessee shall, on demand by Lessor, pay Lessor any amount theretofore paid by Lessor in respect of the purchase of such Equipment. In the event that Lessor has previously paid an amount in respect of the purchase of such Equipment, then the amount to be paid to Lessor shall include interest computed at the rate of per annum from the date of payment of such amount by Lessor to the date of payment by Lessee. Upon such payment Lessee shall be subrogated to Lessor's claim, if any, against the manufacturer or other supplier of the Equipment, provided that Lessee shall indemnify and save Lessor, Lessor's successor or Lessor's assignee, harmless from any and all loss, damage, cost, expense, including attorney's and liability to the manufacturer or other supplier of the Equipment resulting, directly or in any way incurred, from the wrongful rejection of the Equipment or from failure to comply with the duties imposed upon a merchant buyer by the Uniform Commercial Code, including without limitation, Section 2-[illegible] thereof. However, if within such eight day period Lessee shall not have executed and delivered to Lessor a Delivery Acceptance Receipt nor shall have given written notice to Lessor rejecting the Equipment, Lessee agrees that it shall be conclusively presumed, as between Lessor and Lessee, that Lessee has fully inspected the Equipment, that the Equipment is in full compliance with the terms of this Lease and in good condition and repair, and that Lessee is satisfied with and has accepted the Equipment. If, for any reason whatsoever, the Equipment shall not have been delivered to Lessee at the address set forth above and accepted by Lessee in accordance with this Section 4 by the fifth day after the Requested Date of Delivery then Lessor shall have the option to cancel this Lease. If Lessor shall cancel this Lease, Lessee shall, on demand by Lessor, pay Lessor any amount theretofore paid to or for the account of Lessor in respect of the purchase of such Equipment. In the event that Lessor has previously paid an amount in respect of the purchase of such equipment, then the amount to be paid to Lessor shall include interest computed at the rate of ——— per annum from the date of payment of such amount by Lessor to the date of payment by Lessee. Upon such payment Lessee shall be subrogated to Lessor's claim, if any, against the manufacturer or other supplier of the Equipment, provided that Lessee shall indemnify and save Lessor, Lessor's successor or Lessor's assignee, harmless from and all loss, damage, cost, expense, including attorney's fees, and liability to the manufacturer or other supplier of the Equipment.

Section 5. CLAIMS AGAINST SUPPLIER. Lessor agrees to use its best efforts to obtain Supplier's agreement that all representations, warranties and agreements, if any, made by the Supplier to Lessor or Lessee may be enforced by Lessor and/or Lessee jointly and severally; provided, however, that Lessee agrees that it shall make no claim against Supplier except upon three days prior notice to Lessor and provided, further, that Lessee shall not be permitted to exercise such right in the event that it shall be in breach of any of the terms, provisions or conditions of this

THE ADDITIONAL PROVISIONS ON THE REVERSE SIDE HEREOF ARE INCLUDED IN, AND MADE A PART OF, THIS LEASE. THIS IS A NON-CANCELLABLE LEASE FOR THE TERM INDICATED ABOVE.

Rider(s) No. 1

SUB-
NAME OF LESSEE: Kac-Dus Warehouse

X James W Baker Pres
Authorized Signature Title

X
Authorized Signature Title

X
Authorized Signature Title

DATED: 8/Sept. '74, 19—

Gen. Mgr.

PLEASE ORIGINAL

Corporate Seal

...LOCATION OF EQUIPMENT. ...Location of Equipment" and shall not be removed therefrom ...

...USE, MAINTENANCE AND REPAIR. ...

...INSURANCE. ...

...RISK OF LOSS OR DAMAGE. All risks of loss, theft, destruction and damage to the equipment from whatever cause, are assumed by Lessee, who shall be responsible therefor throughout the ... In the event of loss, theft, destruction or damage of any kind whatsoever from any and every cause whatsoever to any item or items or all of the Equipment, Lessee, at the option of Lessor, shall promptly at the ...

...place the same in good repair, condition and working order; or

...replace the same with Equipment of the same make and model, satisfactory to Lessor, and in good repair, condition and working order; or

...if the Equipment or a material portion thereof is determined by Lessor to be lost, stolen, destroyed or damaged beyond repair, pay Lessor the aggregate amount of all unpaid rentals payable throughout the entire ..., and this Lease shall thereupon be deemed terminated. Lessee's obligations to perform under this section shall not be affected by Lessor's inability to obtain insurance proceeds for the loss, theft, destruction or dam... or be obligated to undertake, by litigation or otherwise, the collection of such proceeds ... If any claim against any person for loss, theft, destruction or damage to the Equipment.

...When Lessor shall have received any insurance proceeds on account of any loss, theft, destruction or damage to the Equipment and if Lessor, in its sole judgment, shall be satisfied that Lessee has properly performed ... hereunder by it under this Section 11, Lessor shall pay over to Lessee out of such proceeds the actual amounts expended by Lessee under subparagraphs (a), (b) or (c), as the case may be, of this section. In no e... be required to pay Lessee an amount greater than the net amount of the insurance proceeds received by it.

...of or damage to any of the Equipment shall impair any obligations of the Lessee under this Lease, including without limitation, the obligation to pay rent which shall continue in full force and effect until cancell... ...of this Lease.

12. INDEMNITY. Lessee assumes all responsibility for the manufacture, selection, purchase, delivery, possession, use, condition, operation, maintenance, repair, testing and/or return of the Equipment, and ... ...pursuant hereto, the liability, if any, for personal injuries and property damage howsoever arising from or incidental thereto, whether such injuries be to agents or employees of Lessee or to third parties and wha... ...be to the property of Lessee or of others, Lessee will indemnify and save Lessor, Lessor's successor and Lessor's assignee and their agents, servants, successors and assigns, harmless of, from and against all claims, ...including reasonable fees of attorneys and accountants) liabilities, losses and damages resulting directly or in any way indirectly from or pertaining to the Equipment or the manufacture, selection, purchase, delivery, ...option (including, but not limited to, latent and other defects and whether or not discoverable by it), use, operation, maintenance, repair, testing and/or return thereof and the recovery of claims under insurance poli...

13. SECURITY DEPOSIT. Simultaneously with the execution of this Lease, Lessee is depositing with Lessor, in addition to an amount at least equal to the first installment of rent as specified in Secti... ...sum specified on the front of this Lease under the caption "Amount of Security Deposit", which sum shall be retained by Lessor as security for the payment and performance of Lessee's obligations under this Lease. I... ...in the event Lessee defaults in respect of any of the terms, provisions and conditions of this Lease, including, but not limited to, the payment of rent and additional rent, Lessor, without limiting any of its rights u... ...may use, apply or retain the whole or any part of the security so deposited to the extent required for the performance of any obligations as to which Lessee is in default and, in any such instances, Lessee shall on dem... ...such sums to Lessor so that Lessor may at all times be secured by the full amount specified on the front of this Lease. In the event that Lessee shall fully and faithfully comply with all of the terms, provisions, cove... ...of this Lease, the security shall be returned to Lessee after the date fixed as the end of this Lease and after surrender of the Equipment in accordance with Section 17 hereof. In the event of an assignment of ... ...by Lessor, Lessor shall have the right to transfer the security to its assignee and Lessor shall thereupon be released by Lessee from all liability for the return of such security; and it is agreed that the provisions hereof ... ...any assignment made of the security to a new assignee. Lessee covenants that it will not assign or encumber or attempt to assign or encumber the monies deposited herein as security and that neither Lessor nor its suc... ...shall be bound by any such assignment, encumbrance, attempted assignment or attempted encumbrance.

14. TAXES. Lessee shall pay all costs, expenses, fees and charges incurred in connection with the use and operation of the Equipment during the Lease term hereunder. Lessee shall pay any and all sales, use, ex... ...stamp, documentary, personal property and other taxes, and declare, report and pay all assessments and other governmental charges whatsoever by whomsoever payable on or relating to the Equipment and the purchase, ...or operation thereof (other than federal or state income tax payable by Lessor) as and when the same shall become due and payable. In addition, Lessee shall keep the Equipment free and clear of all levies, liens ... ...Lessor shall have no obligation to dispute or contest the imposition or collection or the basis of computation of any such tax or other governmental charge payable by Lessee.

15. COLLECTION COSTS. If any of the installments of rents and amounts of additional rent provided for herein are not paid within (10) days after such installments shall be due, Lessee agrees to ... ...at Lessor's option, in addition to any and all other remedies provided in this Lease or available at law or in equity, as and for Lessor's costs of collection, interest at the rate of 15% per annum on all sums not paid w... ...exercise by Lessor of the rights granted to it under this Section 15 shall not be deemed a waiver of any of the rights and/or remedies otherwise granted to it under this Lease, including, without limitation, the ri... ...of under Section 17 hereof, to declare the Lessee in default.

16. ASSIGNMENT; SUBLEASE.

16.1 BY LESSEE. Lessee shall not assign, transfer, pledge or otherwise dispose of this Lease or its interest hereunder nor enter into any sublease, lend any of the Equipment, or permit it to be used by anyone o... ...or its authorized employees.

16.2 BY LESSOR. Lessee acknowledges notice of Lessor's intention to assign Lessor's interest in this Lease, and Lessee agrees that Lessor may assign this Lease and/or mortgage the Equipment, in whole or in p... ...ice to Lessee but upon receiving any notice thereof Lessee shall promptly acknowledge receipt thereof in writing. Each such assignee and/or mortgagee shall have all of the rights, but none of the obligations of Lessor u... ...except the obligation to continue to keep the Equipment subject to this Lease in accordance with the terms and conditions hereof. Lessee agrees that it shall not assert against any assignee or mortgagee of Lessor ... ...setoff, recoupment, claim or counterclaim that Lessee may have against Lessor and Lessee shall remain liable for its obligations hereunder in spite of any such assignment or mortgage. Lessor's assignee or mortgagee ... ...on the Lessee or mortgagee on the case may be, same terms and conditions. Upon any assignment or reassignment of this Lease by Lessor or Lessor's successors in interest, as the case may be, Lessee shall, at ... ...Lessor or any of its successors in interest, as the case may be, execute, acknowledge and deliver a statement in writing certifying that this Lease is unmodified and in full force and effect (or if there have been modif... ...the same is in full force and effect as modified and stating the modifications), and the dates to which the rents and other charges have been paid in advance, and if there are any defaults claimed by Lessee. Such statem... ...certain an agreement by Lessee to make all future payments of rents and other charges under the Lease directly to Lessor or Lessor's successor in interest, as the case may be.

17. DEFAULT. If Lessee shall default in the payment of any sums to be paid hereunder and such default shall continue for more than ten (10) days after Lessor has given notice thereof (except that Lessee s... ...tled to notice of default in the case of non-payment or late payment of rents), or if Lessee has breached any other provision of this Lease, or if a petition in bankruptcy or for reorganization or for the appointment o... ...a trustee of any part of the property of Lessee; or any other proceedings for the relief of debtors shall be filed by or against Lessee or if Lessee shall make a general assignment for the benefit of creditors, or susp... ...commit any act amounting to business failure, or if an attachment shall be levied or a tax lien filed against any of Lessee's property, or if Lessee shall make a voluntary or involuntary assignment or transfer of all ... ...y all, of its property, or an unauthorized assignment of its interest hereunder, or if Lessee, in Lessor's sole opinion, shall undergo any material change as to increase Lessor's risk, including any eventuality contem... ...ed by the terms of this Lease, then in any of such events, Lessor, at its option, may declare the Lessee to be in default, in which case Lessor shall have the right to exercise any one or more of the following remedies ... ...Lessor may recover from Lessee as immediately due and payable the entire amount of unpaid rentals for the balance of the term of this Lease, together with any and all other charges which may be then or which bec... ...ayable, including without limitation, costs of collection and attorneys' fees (not to exceed 23% of the amount collected);

Lessor may terminate this Lease and/or within thirty (30) days thereof, demand a return of the Equipment to the destination specified by Lessor, freight prepaid by Lessee;

Lessor, without demand, or notice to or consent of Lessee, and without any court order or other process of law, may take possession of any or all items of Equipment, wherever the Equipment may be located for ...ering upon any premises owned or leased by Lessee without liability for any damages occasioned by such taking possession. Lessor may thereafter hold the Equipment free and clear of this Lease and of any rights of ... ...ee return or retaking of the Equipment shall not constitute termination of this Lease. Lessor may sell all or any part of the Equipment free and clear of any claims of Lessee at private sale or sales, upon ten (10) ... a notice to Lessee, at such price or prices and upon such terms as Lessor may elect, or at public sale or sales at which Lessor may bid for and purchase any or all of the Equipment. Lessor shall also have the right ... or any of the Equipment free and clear of any claims of Lessee, upon ten (10) days prior written notice to Lessee, at such rental or rentals and upon ... terms and conditions as Lessor may elect. Lessee agrees that ... ...ssees and lessees of the Equipment shall have the right to enter upon Lessee's premises to inspect such Equipment and that Lessor may conduct its ... ...ndary leasing transactions on Lessee's premises. The net proceeds of ... sale or sales and/or the net rentals received under any new leasings, less 5% of the Total Cost of the Equipment as the case may be, shall be ... ... (i) first to the payment of all costs and expenses of every ... incurred in connection with or incidental to the holding, preparing for sale or lease and the selling or leasing of the Equipment, including attorney's ... not to exceed 20% of the amount collected) and then (ii) to ... for the entire term provided for herein and then remaining unpaid. The Lessee shall remain liable to the Lessor for the payment of any deficiencies, together with interest thereon computed at the rate of fifteen per ... annum. The surplus, if any, shall be liquidated damages for the breach of this agreement and shall be payable to Lessor.

Lessor may pursue any other remedy at law or in equity.

As to such item or items of Equipment with respect to which Lessor elects to terminate this Lease, this Lease shall continue in full force and effect and Lessee shall be bound to continue to pay and perform its obligations ... repossession or resale of any item of Equipment shall not bar an action for a deficiency as above provided, and the bringing of an action for the entry of judgment against the Lessee shall not bar the Lessor's rights ... or all items of Equipment.

18. OPTION TO RENEW. Lessee shall have the option to renew this Lease with respect to the Equipment as an entirety for such additional term, if any, and for such rental as is specified on the front ... provided that such option shall be exercisable only upon Lessee's giving written notice to Lessor of Lessee's intent so to renew. Lessee's renewal notice shall be given during the third month preceding the expiration of ... of this Lease and shall be accompanied by Lessee's check in an amount equal to the aggregate rentals payable by Lessee during the first year of the renewal period.

19. SURRENDER. At the expiration of this Lease or upon demand by Lessor made pursuant to paragraph (b) of Section 17 hereof, or upon the termination of this Lease in any manner whatever, Lessee ... shipment and ship the same to the destination specified by Lessor and by such carrier as Lessor shall designate. Lessee shall return the Equipment in good operating order and repair. Any and all transportation ... the returning of the Equipment as aforesaid shall be borne by the Lessee. Transportation costs shall be deemed to include insurance for the full replacement value of the Equipment without consideration for depreciation.

20. MISCELLANEOUS.

20.1. REMEDIES CUMULATIVE. Lessor may pursue any remedy available to it at law or in equity. Each and every right and remedy hereby specifically given to Lessor may be exercised from time to time ... and as often and in such order as may be deemed expedient by Lessor. All such rights and remedies shall be cumulative and the exercise of one shall not be deemed a waiver of the right to exercise any other or all ... omission by Lessor in the exercise of any such power or remedy and no renewal or extension of any payments due hereunder shall impair any such power or remedy or shall be construed to be a waiver of any default ... therein.

20.2. NON-CANCELLABILITY. The Lease hereunder shall continue in full force and effect and be non-cancellable, except in accordance with its terms for the rental term herein provided.

20.3 LESSOR'S RIGHT TO CURE DEFAULTS. In the event of failure of Lessee to pay any costs, expenses, fees, charges or taxes (as provided in Section 11 above) or to procure or maintain insurance ... (as Section 10 above), or failure to pay or perform any other obligation hereunder, Lessor shall have the right, but shall not be obligated, upon ten (10) days prior notice to Lessee (mail to Lessee's place and time, ... Lessee shall repay Lessor the cost thereof with the next payment of rent as additional rent together with interest (at the rate of 15% per annum) from the date of any such payment by Lessor. The exercise by Le... granted to it under this subsection shall not be deemed a waiver of any of the rights and/or remedies otherwise granted to it under this Lease, including, without limitation, the right, granted to Lessor under Section ... where the Lessee in default.

20.4 ENTIRE AGREEMENT. This Lease, together with the schedule attached hereto, if any, constitutes the entire agreement between the parties hereto, and can only be modified by further agreement ... by and between such parties. No representations, warranties or agreements, oral or written, expressed or implied have been made by either party hereto with respect to the Lease hereunder or to the Equipment covered hereby ... except as expressly provided herein.

20.5 COOPERATION. Lessee shall provide Lessor with such corporate resolutions, opinions of counsel, certificates and other documents as Lessor may reasonably request from time to time. Lessee shall execute ... such acknowledgments, including without limitation, financing and continuation statements under the Uniform Commercial Code as Lessor shall require for filing or recording this Lease or for effecting a release or ... with the Secretary of State of the state of incorporation or residence of Lessee, the Secretary of State of the state in which Lessee's principal office is located (if different from the state of incorporation or residence) ... the County Clerk of the county in which the Equipment leased hereunder is located and used and such other places as Lessor shall deem necessary or desirable. Lessor is hereby authorized to file any such ... ...ments of Lessee or any of its subsidiaries. Whenever requested by its assignee, or a third party, Lessor will join with Lessee in executing financing statements pursuant to the Uniform Commercial Code.

20.6 AGREEMENT AS LEASE; VENUE; SERVICE OF PROCESS. IT IS HEREBY STIPULATED BY AND BETWEEN LESSOR AND LESSEE THAT THIS AGREEMENT SHALL BE DEEMED ... ONLY. IT IS FURTHER STIPULATED THAT SUCH LEASE WAS MADE IN NEW YORK COUNTY, NEW YORK, REGARDLESS OF THE ORDER IN WHICH THE SIGNATURES OF THE PARTIES SHALL BE AFFIXED ... SUCH LEASE SHALL BE INTERPRETED AND THE RIGHTS AND LIABILITIES OF THE PARTIES DETERMINED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK AS PART OF THE CONSIDERATION ... FOR'S EXECUTING THIS LEASE, LESSEE HEREBY AGREES THAT ALL ACTIONS OR PROCEEDINGS ARISING, DIRECTLY OR INDIRECTLY, FROM THIS LEASE SHALL BE LITIGATED ONLY IN COURTS HAVING ... STATE OF NEW YORK, AND LESSEE HEREBY CONSENTS TO THE JURISDICTION OF ANY COURT LOCATED WITHIN THE STATE OF NEW YORK, AND WAIVES PERSONAL SERVICE OF ANY AND ALL PROCESS ... HEREIN, CONSENTS THAT ALL SUCH SERVICE OF PROCESS MAY BE MADE BY CERTIFIED OR REGISTERED MAIL, RETURN RECEIPT REQUESTED, DIRECTED TO LESSEE AT THE ADDRESS HEREINABOVE ... SERVICE SO MADE SHALL BE COMPLETE FIVE (5) DAYS AFTER THE SAME HAS BEEN POSTED AS AFORESAID.

20.7 TAX TREATMENT. No representation is, or has been, made as to the treatment for income tax purposes of payments hereunder, it being understood that whether a particular agreement is to be treated ... for purposes as a Lease depends upon the facts and circumstances in each case.

20.8 COUNTERPARTS AND RECORDING. This Lease may be executed in any number of required counterparts, each counterpart constituting an original. The parties are to execute acknowledgments ... counterparts of this agreement as may be required at any time in order to comply with the provisions of any applicable law requiring the recording or filing of this agreement or a copy hereof in the public ... States, any state or any political or governmental subdivision of any state. Lessee agrees to pay the fees and charges imposed by law for such mandatory recording or filing and the necessary expenses of the Lessor ... of such recording or filing.

20.9 FAILURE TO SURRENDER AS EXTENSION. If, upon the expiration of the full term of this Lease as above provided for, Lessee does not immediately return the Equipment to Lessor ... or upon its return, then the Equipment shall continue to be held and leased under and in accordance with the conditions in this agreement contained, and this agreement shall thereupon be extended automatically as to the ... ...ver the Lessee or Lessor will thirty (30) days notice in writing to the other may terminate it, whereupon Lessee shall forthwith deliver the equipment to Lessor.

20.10 HEADINGS. The section headings contained herein have been inserted as a matter of convenience only and shall not be deemed to affect the interpretation of the text.

20.11 SEVERABILITY. If a provision hereof or any remedy herein provided for shall be invalid under any applicable law, such provision shall be inapplicable and deemed omitted, but the same shall not affect ... provisions hereof which shall be construed to effect the manifest intent thereof.

20.12 NOTICE. Any notice or other communication, including rent payments, authorized or required by this Lease shall be made to the parties hereto in writing at the addresses shown set forth on the first page ... or other address as either party may designate to the other by notice similarly served, by personal delivery or by first class mail, postage prepaid. All notices and other communications (other than rent payments) ... ...two (2) days after the date of mailing.

20.13 INTEREST. In the event that the rate of interest at any time payable hereunder by either party to the other shall exceed the legal amount to payable, then the interest to be paid shall be computed at ... ...shall then be legally permissible.

20.14 ACCEPTANCE BY LESSOR. Neither this Lease nor any modification hereto, oral or written, shall be deemed binding upon Lessor unless executed by Lessor's Executive Vice President or ... ...executive or other agent of Lessor shall be deemed to have the authority to bind Lessor in any respect.

RIDER NUMBER 1 TO SUBLEASE AGREEMENT NO. 057/82/000 126/4 BETWEEN INTERMODAL SYSTEMS LEASING, INC., SUBLESSOR AND KAC-DUE WAREHOUSE, SUBLESSEE

The printed part of this Sublease is hereby amended, modified and supplemented as follows: To the extent that the printed part of the Sublease and this Rider are compatible, each shall be deemed in addition to and in expansion of, the other. Wherever there is any conflict between this Rider and the printed part of this Sublease, the provisions of this Rider are paramount and the Sublease shall be construed accordingly.

1. For purposes of this Sublease only, and without in any way changing any of the terms, provisions, conditions and covenants in the printed part of this Sublease or this Rider, all references in the printed part of this Sublease to "Lessor" shall mean "Sublessor", all references to "Lease" shall mean "Sublease" and all references to "Lessee" shall mean "Sublessee".

2. This Sublease, and the rights of Sublessor and Sublessee hereunder, shall be subordinate in all respects to an Agreement of Lease No. 057/82/000 126/0 (the "Prime Lease") between Locafrance U. S. Corporation, with a place of business at 919 Third Avenue, New York, New York ("Locafrance" as lessor, and Sublessor as lessee, and to the rights of Locafrance thereunder.

3. Sublessee hereby acknowledges Sublessor's right to assign its interests under this Sublease to Locafrance, and that it shall do so and consents to such assignment, and in consideration of this Sublease, the Sublessee agrees that its obligation to pay directly to Locafrance the amounts (whether designated as rentals or otherwise) which become due as set forth in the Sublease shall be absolutely unconditional, and it promises so to pay the same to Locafrance at its address hereinbefore stated, notwithstanding any defense, set-off or counterclaim whatsoever, whether by reason of breach of the Sublease or otherwise,

which it may or might now or hereafter have as against the Sublessor (the Sublessee reserving its right to have recourse directly against the Sublessor on account of any such defense, set-off or counterclaim).

4. Sublessor and Sublessee each recognize and agree that Locafrance is the owner of the Equipment and the Equipment shall at all times remain the property of Locafrance, and that neither Sublessor or Sublessee has any right, title, interest or equity in the Equipment whatsoever except as may be set forth in the Prime Lease and Sublease. Sublessee shall at all times protect and defend, at its own cost and expense, the title of Locafrance from and against all claims, liens and legal process of creditors of Sublessee and Sublessor, and keep all the Equipment free and clear from all such claims, liens and process. The Equipment is, and shall at all times remain, personal property irrespective of the way it may be affixed to the realty, and Sublessee shall maintain each item of Equipment so that it may be removed from any building in which it is placed without damaging such building. Sublessee will so notify any landlord or mortgagee of the premises in which the Equipment is kept and will obtain the agreement thereto by all such landlords and mortgagees. If at any time during the term hereof Locafrance supplies Sublessee with labels, plates or other markings, stating that the Equipment is owned by Locafrance, Sublessee shall affix and keep the same upon a prominent place on each and every item comprising the Equipment.

5. Any default by Sublessor under the Prime Lease shall be construed to be a default by Sublessee under this Sublease thereby entitling Locafrance to exercise and to avail itself of all of its rights and remedies under the Prime Lease; provided, however, if Sublessee is not then in default under this Sublease, Sublessee may, if Locafrance consents in writing, continue to have the quiet use and enjoyment of the Equipment on such terms and conditions, including the payment of rentals, as may be satisfactory to Locafrance.

6. Notwithstanding the sublease of the Equipment under this Sublease, it is understood and agreed that Sublessor shall be and remain primarily and not secondarily liable to Locafrance for the full and prompt payment and performance by Sublessor of all of its obligations, accrued and executory, under the Prime Lease.

INTERMODAL SYSTEMS LEASING, INC.

By _____

Sublessee: KAC-DUS WAREHOUSE

By _____

Optional Purchase Option Provision

Provided that all lease rental payments and all other payments required to be made under the Sublease have been made by Sublessee, and Sublessee has not been and is not then, in default under the terms of the Sublease, or if Sublessee has been, or is, in default under the terms of this Sublease such default has been cured, or waived by Sublessor and Locafrance, at the expiration of the base term of this Sublease, Sublessee shall have the option to purchase all of Sublessor's right, title and interest in the Equipment at a purchase price equal to the then fair market value of the Equipment determined by an independent appraiser selected by Locafrance. The cost of such appraisal shall be borne by Sublessee. The option shall be exercised by Sublessee giving written notice to Locafrance and to Sublessor that it is exercising the option granted herein, which notice shall include the date this Sublease expires. On such date the option price shall be due and payable by Sublessee to Sublessor, upon receipt of which Sublessor shall deliver to Sublessee a Bill of Sale transferring all of Sublessor's right, title and interest in the Equipment to Sublessee.

EXHIBIT D - COPIES OF COMPLAINTS OF LOCAFRANCE (pp. 237a-306a)

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

----------X

LOCAFRANCE U.S. CORPORATION,

Plaintiff,

-against-

INTERSTATE DISTRIBUTION SERVICES, INC.,

Defendant.

----------X

COMPLAINT

Plaintiff, by its attorneys, REGAN GOLDFARB HELLER WETZLER & QUINN, complaining of Defendant, alleges as follows:

1. Plaintiff is a Corporation organized and existing under and by virtue of the laws of the State of Delaware having at all relevant times herein maintained its principal place of business at 919 Third Avenue, in the City, County and State of New York and now maintaining an office at 20 Woodsbridge Road, Katonah, New York.

2. Upon information and belief, Defendant INTERSTATE DISTRIBUTION SERVICES, INC. ("Defendant") is a Corporation organized and existing under and by virtue of the laws of the State of Ohio with offices at 302 South Byrne Road, Toledo, Ohio.

3. On or about August 15, 1974, Plaintiff and Defendant entered into a written agreement (a copy of which is annexed hereto as Exhibit "A") whereby Plaintiff leased to Defendant the equipment described in Schedule A to the said written agreement.

4. Pursuant to the aforesaid written agreement Defendant obligated itself to pay to Plaintiff monthly payments of $1,097.25 for a period of thirty-six (36) months, commencing on or about August 15, 1974.

5. Although Plaintiff has in all respects performed its obligations under the said written agreement, Defendant has failed and refused to pay Plaintiff the monthly rental payments due and owing under the said written agreement since in or about July, 1975 thereby placing Defendant in default under Section "17" thereof.

6. Defendant has been advised of, but has not cured, the aforesaid default and continues to refuse to make the aforesaid monthly rental payments.

7. By reason of the foregoing, there is now due and owing to the Plaintiff from Defendant the sum of $28,528.50.

WHEREFORE, Plaintiff demands judgment against Defendant in the sum of $28,528.50 together with interest thereon from July 15, 1975, the costs and disbursements of this action and for such other and further relief as the Court may deem just and proper.

Dated: New York, New York
October 24, 1975

Yours, etc.

REGAN GOLDFARB HELLER WETZLER
& QUINN
ATTORNEYS FOR PLAINTIFF
445 Park Avenue
New York, New York 10022
(212) 754-3000

Sold [illegible] 1236/

Commitment No. [illegible]

LESSOR:	NAME AND ADDRESS OF SUPPLIER/SUBLESSEE:
Commercial Systems Leasing, Inc. [illegible] East 34th Street [illegible], N.Y. 10017 Formed in State of Delaware	Interstate Distribution Services, Inc. 302 South Byrne Road Toledo, Ohio 43615 Incorporated in the State of Ohio

DESCRIPTION

See attached Schedule "A" annexed hereto

LOCATION OF EQUIPMENT: STREET: 302 South Byrne Road; CITY: Toledo; COUNTY: Lucas; STATE: Ohio

RENTAL COMMENCEMENT DATE: August 15, 1974

BASE TERM OF LEASE:	PERIOD	NUMBER OF RENTALS	AMOUNT OF EACH RENTAL	SALES TAXES	TOTAL	AMOUNT OF SECURITY DEPOSIT
Months	36 Months	36	$1,050 ~~$37,850.25~~	47.25 ~~$60.75~~	$1,097.25 ~~$1,[illegible]~~	$ —
RENTALS PAYABLE MONTHLY ☒ QUARTERLY ☐						ADVANCE RENTAL(S) $1,097.25 ~~$[illegible]~~ REPRESENTING PAYMENT FOR THE 1st RENTAL
Renewal Rental Payable Annually In Advance						PAYABLE AT THE SIGNING OF THIS LEASE

Section 1. LEASE. Lessor hereby leases to Lessee, and Lessee hereby rents from Lessor, subject to the terms, conditions and rents hereinafter set forth, the personal property listed above, or separately scheduled, in the schedule attached hereto, made a part hereof and marked Schedule "A" together with all replacement parts, additions, repairs and accessories incorporated and/or affixed thereto (the "Equipment"). It is understood that this Lease shall be effective and binding upon Lessor only when executed by Lessor ("Commitment Date") and that the term of this lease shall commence upon [illegible] (the "Rental Commencement Date").

Section 2. SELECTION AND ORDERING OF EQUIPMENT. Lessee has requested equipment of the type and quantity specified above or in the Schedule A attached [illegible] Lessee's selection as to Equipment or any other matter by Supplier shall in any way affect Lessee's duty to pay the rent and perform its other obligations as set forth in this Lease.

Section 3. NO WARRANTIES BY LESSOR. Lessee acknowledges that Lessor, Lessor's successor, or Lessor's assignee is not the manufacturer of the Equipment, the agent of the manufacturer nor the distributor thereof and that Lessee has selected [illegible] the Equipment leased hereunder prior to having requested the Lessor to purchase it for leasing to the Lessee [illegible] LESSEE ALSO ACKNOWLEDGES THAT LESSOR HAS MADE AND MAKES NO WARRANTIES OR REPRESENTATIONS OF WHATSOEVER NATURE DIRECT OR INDIRECT, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, AS TO THE SUITABILITY, DURABILITY, FITNESS FOR USE, MERCHANTABILITY, DESIGN OR CONDITION OF, OR AS TO THE QUALITY OR CAPACITY OF THE MATERIAL, OR WORKMANSHIP, OR MARKETABILITY, QUALITY OR OTHERWISE OF THE EQUIPMENT, OR OF THE ABILITY OF SUPPLIER TO PERFORM, OR THAT THE EQUIPMENT WILL SATISFY THE REQUIREMENTS OF ANY LAW, RULE, SPECIFICATION OR CONTRACT WHICH PROVIDES FOR SPECIFIC DELIVERY OR OPERATORS OR SPECIAL METHODS, IT BEING AGREED THAT ALL SUCH RISKS, AS BETWEEN LESSOR AND LESSEE, ARE TO BE BORNE BY LESSEE AT ITS SOLE RISK AND EXPENSE. Lessee specifically waives all rights of any kind to make a claim against the Lessor, Lessor's successor or Lessor's assignee herein for breach of any warranty of any kind whatsoever.

3.1 ASSUMPTION OF ALL RISK BY LESSEE. Inasmuch as Lessee has selected [illegible] the Equipment [illegible] and has agreed to assume all risk of loss resulting from [illegible] Lessee's selection for any reason whatsoever (including force majeure), it is understood and agreed that Lessee irrevocably waives any claim against Lessor for any loss or [illegible] resulting from any cause, circumstance or event of whatsoever nature including but not limited to, failure of or delay in delivery, delivery to the wrong place, delivery of improper Equipment, defect in the Equipment, defect or unfitness of the Equipment or the installation of the same, governmental regulation, Act of God, strike, embargo or any other cause, circumstances, whether of like or unlike nature and, in connection therewith, Lessee agrees that any of the same shall not relieve Lessee of the obligations to pay rent or of any other obligation under this Lease. Lessor, Lessor's successor or Lessor's assignee, shall have no obligation to install, erect, test, adjust or service the Equipment. Lessee shall, at its own cost and expense; (a) pay all charges and expenses in connection with operation of all Equipment (b); comply with all laws, ordinances, regulations, requirements and rules with respect to the use, maintenance and operation of the Equipment; (c) make all repairs and replacements required to be made to maintain the Equipment in good condition, reasonable wear and tear excepted.

...the Equipment, Lessee agrees to take any and all such action, including without limiting the generality of the foregoing, alterations or modifications, structural or otherwise, to the ... in which the Equipment shall be located. Lessee shall inspect the Equipment within eight (8) business days after its arrival at the address set forth above, and if in good ... order and repair accept the Equipment by executing and delivering to Lessor a dated notice of receipt in the form annexed hereto and labeled "Delivery Acceptance Receipt" ... hereby authorizes Lessor to ... this Lease the serial number or other identification data of each item of Equipment as delivered. If, Lessee shall determine that the Equipment is not in good working order and repair it within such eight day period, send to Lessor a written notice specifying the defect or other objection to the Equipment and stating that it is rejecting the Equipment. In the event that Lessee gives ... notice referred to in the immediately preceding sentence, Lessee shall, on demand by Lessor, pay Lessor any amount ... paid or owing by Lessor in respect of the purchase of such ... In the event that Lessor has previously paid an amount in respect of the purchase of such Equipment, then the amount to be paid to Lessor shall include interest computed at the rate of ... per annum from the date of payment of such amount by Lessor to the date of payment by Lessee. Upon such payment, Lessee shall be subrogated to Lessor's claim, if any, against the manufacturer ... supplier of the Equipment, provided that Lessee shall indemnify and save Lessor, Lessor's ... or Lessor's assignee, harmless from any and all loss, damage, cost, expense, including attorney's ... liability to the manufacturer or other supplier of the Equipment resulting, directly or indirectly, from the wrongful rejection of the Equipment or from failure to comply with the duties ... upon a merchant buyer by the Uniform Commercial Code, including without limitation, Section 2-603 thereof. However, if within such eight day period Lessee shall not have executed and delivered ... a Delivery Acceptance Receipt nor shall have given written notice to Lessor rejecting the Equipment, Lessee agrees that it shall be conclusively presumed, as between Lessor and Lessee, that ... has fully inspected the Equipment, that the Equipment is in full compliance with the terms of this Lease and in good condition and repair, and that Lessee is satisfied with and has accepted the ... terms. If, for any reason whatsoever, the Equipment shall not have been delivered to Lessee at the address set forth above and accepted by Lessee in accordance with this Section 4 by the fifth day ... Requested Date of Delivery thereof, Lessor shall have the option to cancel this Lease. If Lessor shall cancel this Lease, Lessee shall, on demand by Lessor, pay Lessor any amount theretofore paid ... by Lessor in respect of the purchase of such Equipment. In the event that Lessor has previously paid an amount in respect of the purchase of such equipment, the amount to be paid to ... shall include interest computed at the rate of 11% per annum from the date of payment of such amount by Lessor to the date of payment by Lessee. Upon such payment, Lessee shall be subro... ...Lessor's claim, if any, against the manufacturer or other supplier of the Equipment, provided that Lessee shall indemnify and save Lessor, Lessor's successor or Lessor's assignee, ...

...5 CLAIMS AGAINST SUPPLIER. Lessor agrees to use its best efforts to obtain Supplier's agreement that all representations, warranties and agreements, if any, made by ... to Lessor or Lessee may be enforced by Lessor and/or Lessee jointly and severally; provided, however, that Lessee agrees that it shall make no claim against Supplier except upon three days ... written notice to Lessor and provided, further, that Lessee shall not be permitted to exercise such right in the event that it shall be in breach of any of the terms, provisions or conditions of this ... Under no circumstances shall any rights obtained for Lessee under this section relieve Lessee of any of its obligations under this Lease.

ADDITIONAL PROVISIONS ON THE REVERSE SIDE HEREOF ARE INCLUDED IN, AND MADE A PART OF, THIS LEASE. THIS NON-CANCELLABLE LEASE FOR THE TERM INDICATED ABOVE..

...(s) No. I

NAME OF ~~Lessee~~ Sublessee: Interstate Distribution Services

X _____ Authorized Signature _____ Title

X _____ Authorized Signature _____ Title

X _____ Authorized Signature _____ Title

_____, 19 75

_____ V.P., President or Secretary-Treasurer

...E ORIGINAL

Corporate Seal

[illegible]

[illegible]

[illegible]

[illegible] the entire sum provided for herein and then remaining unpaid. The Lessee shall remain liable to the Lessor for the payment of any deficiencies, together with interest thereon computed at the rate of [illegible] per annum. The surplus, if any, shall be liquidated damages for the breach of this agreement and shall be payable to Lessor.

Lessor may pursue any other remedy at law or in equity.

As to such item or items of Equipment with respect to which Lessor elects to terminate this Lease, this Lease shall continue in full force and effect and Lessee shall be bound to continue to pay and perform its obligations hereunder with respect to such item or items of Equipment. The termination or resale of any item of Equipment shall not bar an action for a deficiency as above provided, and the bringing of an action for the entry of judgment against the Lessee shall not bar the Lessor's right to bring subsequent actions with respect to such item or items of Equipment.

21. OPTION TO RENEW. Lessee shall have the option to renew this Lease with respect to the Equipment as an entirety for such additional term, if any, and for such rental as is specified on the front hereof, provided that such option shall be exercisable only upon Lessee's giving written notice to Lessor of Lessee's intent so to renew. Lessee's renewal notice shall be given during the third month preceding the expiration of the original term of this Lease and shall be accompanied by Lessee's check in an amount equal to the aggregate rentals payable by Lessee during the first year of the renewal period.

22. SURRENDER. At the expiration of this Lease or upon demand by Lessor made pursuant to paragraph (b) of Section 17 hereof, or upon the termination of this Lease in any manner whatever, Lessee shall deliver the Equipment to the destination specified by Lessor and by such carrier as Lessor shall designate. Lessee shall return the Equipment in good operating order and repair. Any and all transportation charges in connection with the return of the Equipment as aforesaid shall be borne by the Lessee. Transportation costs shall be deemed to include insurance for the full replacement value of the Equipment without consideration for depreciation.

23. MISCELLANEOUS.

(a) REMEDIES CUMULATIVE. Lessor may pursue any remedy available to it at law or in equity. Each and every right and remedy hereby specifically given to Lessor may be exercised from time to time and as often and in such order as may be deemed expedient by Lessor. All such rights and remedies shall be cumulative and the exercise of one shall not be deemed a waiver of the right to exercise any other or others. No delay in the exercise of any such power or remedy and no renewal or extension of any payments due hereunder shall impair any such power or remedy or shall be construed to be a waiver of any default hereunder.

(b) NON-CANCELLABILITY. The Lease hereunder shall continue in full force and effect and be non-cancellable, except as aforesaid with respect to its terms for the rental term herein provided.

(c) LESSOR'S RIGHT TO CURE DEFAULTS. In the event of failure of Lessee to pay any taxes, expenses, fees, charges or liens (as provided in Section 14 hereof) or to procure or maintain insurance as herein provided, or in the case of failure by other covenants hereof, Lessor shall have the right, but shall not be obligated upon five days prior notice to Lessee (or such shorter period as Lessor may deem reasonable under the circumstances) to pay such taxes, expenses, fees, charges or liens or to procure such insurance, or to perform such other covenant, and the cost thereof shall be payable by Lessee upon demand by Lessor, with interest thereon at the rate of 15% per annum from the date of any such payment by Lessor. The exercise by Lessor of the rights granted to it under this paragraph shall not be deemed a waiver of any of the rights and/or remedies otherwise granted to it under this Lease, including without limitation, the right granted to it under Section 17 hereof in the event of default.

(d) ENTIRE AGREEMENT. This Lease, together with the schedule attached hereto, if any, constitutes the entire agreement between the parties hereto, and can only be modified by further agreement in writing executed by both parties hereto. No warranties or agreements, oral or written, expressed or implied that have been made by either party hereto with respect to the Lease hereunder or to the Equipment covered thereby are incorporated herein.

(e) COOPERATION. Lessee will give to Lessor with such corporate resolutions, opinions of counsel, certificates and other documents as Lessor may reasonably request from time to time. Lessee shall execute and deliver to Lessor such instruments and take such further action, including and execution of assignments under the Uniform Commercial Code as Lessor shall request for the purpose of protecting this Lease or the rights or duties of Lessor or Lessee hereunder. Lessee shall furnish to Lessor a certificate of incumbency of Secretary of State of the state in which Lessee is organized, or a certificate of corporate Lessee is duly authorized to do business in the state in which the Equipment covered by this Lease is located and each such other state as Lessor shall deem necessary, or favorable opinion of counsel to Lessee as to such matters with respect to Lessee as Lessor shall deem necessary. Lessee will file or cause to be filed such financing statements pursuant to the Uniform Commercial Code as Lessor shall request.

(f) AGREEMENT SUBJECT TO STATE LAWS; VENUE; JURISDICTION AND DISPUTES. IF ANY PROVISION OF THIS AGREEMENT SHALL BE HELD OR BECOME INVALID OR INOPERATIVE FOR ANY REASON, AND IF THE REMAINING PROVISIONS OF THIS AGREEMENT SHALL BE SUFFICIENT TO CONSTITUTE A BINDING AGREEMENT, THE INVALIDITY OR INOPERATIVENESS OF ANY PROVISION SHALL NOT AFFECT THE VALIDITY OR OPERATIVENESS OF THE REMAINING PROVISIONS HEREOF; AND IF THE REMOVAL OF SUCH PROVISION SHALL RESULT IN AN INCOMPLETE AGREEMENT, THE PARTIES AGREE TO NEGOTIATE IN GOOD FAITH TO ADD SUCH PROVISIONS AS MAY BE NECESSARY TO REMEDY THE INCOMPLETENESS. THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK, WITHOUT REGARD TO CONFLICTS OF LAW PRINCIPLES. ANY ACTION OR PROCEEDING BY LESSEE AGAINST LESSOR SHALL BE BROUGHT ONLY IN A COURT LOCATED IN THE STATE OF NEW YORK. LESSEE HEREBY CONSENTS TO THE PERSONAL JURISDICTION OF SUCH COURT AND WAIVES ANY OBJECTION TO VENUE IN SUCH COURT AND ANY CLAIM THAT SUCH FORUM IS AN INCONVENIENT FORUM. ANY ACTION OR PROCEEDING BY LESSOR AGAINST LESSEE MAY BE BROUGHT IN ANY COURT IN ANY JURISDICTION. LESSEE HEREBY CONSENTS TO THE PERSONAL JURISDICTION OF SUCH COURT AND WAIVES ANY OBJECTION TO VENUE IN SUCH COURT AND ANY CLAIM THAT SUCH FORUM IS AN INCONVENIENT FORUM. ANY JUDICIAL PROCEEDING BROUGHT BY LESSEE AGAINST LESSOR OR ANY DISPUTE ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY TRANSACTION CONTEMPLATED HEREBY SHALL BE BROUGHT ONLY IN A COURT LOCATED IN NEW YORK, NEW YORK. LESSEE HEREBY CONSENTS TO THE PERSONAL JURISDICTION OF, AND VENUE IN, SUCH COURTS AND WAIVES ANY OBJECTION WITH RESPECT THERETO BASED ON VENUE OR FORUM NON CONVENIENS. LESSEE HEREBY WAIVES PERSONAL SERVICE OF PROCESS AND AGREES THAT ALL SUMMONS AND COMPLAINTS MAY BE SERVED UPON LESSEE BY REGISTERED OR CERTIFIED MAIL, RETURN RECEIPT REQUESTED, DIRECTED TO LESSEE AT THE ADDRESS PROVIDED FOR LESSEE HEREIN. LESSEE AGREES THAT SERVICE SO MADE SHALL BE DEEMED COMPLETED ON THE SAME DAY THAT THE SAME HAS BEEN POSTED AS AFORESAID.

(g) [illegible] Whether or not this Lease has been made as to the investment tax [illegible] of payments hereunder, it is [illegible] intention that whether a particular agreement is to be treated as a lease or [illegible] and determined in accordance

[illegible]

[illegible]

[illegible]

RIDER [illegible] TO SUBLEASE DATED [illegible] BETWEEN [illegible], INC., SUBLESSOR AND [illegible], INC., SUBLESSEE

The printed part of this Sublease is hereby amended, modified and supplemented as follows: To the extent that the printed part of the Sublease and this Rider are compatible, each shall be deemed in addition to and in expansion of, the other. Wherever there is any conflict between this Rider and the printed part of this Sublease, the provisions of this Rider are paramount and the Sublease shall be construed accordingly.

1. For purposes of this Sublease only, and without in any way changing any of the terms, provisions, conditions and covenants in the printed part of this Sublease or this Rider, all references in the printed part of this Sublease to "Lessor" shall mean "Sublessor", all references to "Lease" shall mean "Sublease" and all references to "Lessee" shall mean "Sublessee".

2. This Sublease, and the rights of Sublessor and Sublessee hereunder, shall be subordinate in all respects to an Agreement of Lease No. 057/32/000 126/0 (the "Prime Lease") between Locafrance U. S. Corporation, with a place of business at 919 Third Avenue, New York, New York ("Locafrance") as lessor, and Sublessor as lessee, and to the rights of Locafrance thereunder.

3. Sublessee hereby acknowledges Sublessor's right to assign its interests under this Sublease to Locafrance, and that it shall do so and consents to such assignment, and in consideration of this Sublease, the Sublessee agrees that its obligation to pay directly to Locafrance the amounts (whether designated as rentals or otherwise) which become due as set forth in the Sublease shall be absolutely unconditional, and it promises so to pay the same to Locafrance at its address hereinbefore stated, notwithstanding any defense, set-off or counterclaim whatsoever, whether by reason of breach of the Sublease or otherwise, which it may or might now or hereafter have as against the Sublessor (the Sublessee reserving its right to have recourse directly against the Sublessor on account of any such defense, set-off or counterclaim).

4. Sublessor and Sublessee each recognize and agree that Locafrance is the owner of the Equipment and the Equipment shall at all times remain the property of Locafrance, and that neither Sublessor or Sublessee has any right, title, interest or equity in the Equipment whatsoever except as may be set forth in the Prime Lease and Sublease. Sublessee shall at all times protect and defend, at its own cost and expense, the title of Locafrance from and against all claims, liens and legal process of creditors of Sublessee and Sublessor, and keep all the Equipment free and clear from all such claims, liens and process. The Equipment is, and shall at all times remain, personal property irrespective of the way it may be affixed to the realty, and Sublessee shall maintain each item of Equipment so that it may be removed from any building in which it is placed without damaging such building. Sublessee will so notify any landlord or mortgagee of the premises in which the Equipment is kept and will obtain the agreement thereto by all such landlords and mortgagees. If at any time during the term hereof Locafrance requires Sublessee with labels, plates or other writings, stating that the Equipment is owned by Locafrance, Sublessee shall affix and keep the same upon a prominent place on each and every item comprising the Equipment.

5. Any default by Sublessor under the Prime Lease shall be construed to be a default by Sublessee under this Sublease thereby entitling Locafrance to exercise and to avail itself of all of its rights and remedies under the Prime Lease; provided, however, if Sublessee is not then in default under this Sublease, Sublessee may, if Locafrance consents in writing, continue to have the quiet use and enjoyment of the Equipment on such terms and conditions, including the payment of rentals, as may be satisfactory to Locafrance.

6. Notwithstanding the sublease of the Equipment under this Sublease, it is understood and agreed that Sublessor shall be and remain primarily and not secondarily liable to Locafrance for the full and prompt payment and performance by Sublessor of all of its obligations, accrued and executory, under the Prime Lease.

INTERMODAL SYSTEMS LEASING, INC.

By _____

Sublessee: INTERSTATE DISTRIBUTION SERVICES, INC.

By _____

Optional Purchase Option Provision

Provided that all lease rental payments and all other payments required to be made under the Sublease have been made by Sublessee, and Sublessee has not been and is not then, in default under the terms of the Sublease, or if Sublessee has been, or is, in default under the terms of this Sublease such default has been cured, or waived by Sublessor and Locafrance, at the expiration of the base term of this Sublease, Sublessee shall have the option to purchase all of Sublessor's right, title and interest in the Equipment at a purchase price equal to the than fair market value of the Equipment determined by an independent appraiser selected by Locafrance. The cost of such appraisal shall be borne by Sublessee. The option shall be exercised by Sublessee giving written notice to Locafrance and to Sublessor that it is exercising the option granted herein, which notice shall include the date this Sublease expires. On such date the option price shall be due and payable by Sublessee to Sublessor, upon receipt of which Sublessor shall deliver to Sublessee a Bill of Sale transferring all of Sublessor's right, title and interest in the Equipment to Sublessee.

Equipment	Model Number	Serial Number
Towmotor Forklift	502S	670094
" "	502S	640392
" "	502S	640320
" "	502S	660740
" "	502S	660737
" "	502S	660735
" "	502S	670058
" "	502S	660738
" "	502S	660716

C 104 Summons without Notice, Blank Cont. • to Personal Service

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80 EXCHANGE PLACE AT BROADWAY, NEW YORK

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

LOCAFRANCE U.S. CORPORATION,

Plaintiff

against

KAC-DUS WAREHOUSE,

Defendant

Index No. :

Plaintiff designates
New York
County as the place of trial

The basis of the venue is
THE CASE OF ACTION ARISES IN
NEW YORK COUNTY

RECEIVED
DEPARTMENT OF CIVIL PROCESS
1975 NOV -3 PM 3:35
SUPREME COURT
CO. OF N.Y.

Summons

Plaintiff resides at
20 Woodsbridge Road
Katonah, New York
County of

To the above named Defendant KAC-DUS WAREHOUSE

You are hereby summoned *to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance, on the Plaintiff's Attorney(s) within* 20 *days after the service of this summons, exclusive of the day of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.*

Dated, October 23, 1975

REGAN GOLDFARB HELLER WETZLER & QUINN
Attorney(s) for Plaintiff

Defendant's Address:

4700 Deramus Avenue
Kansas City, Missouri

SERVE: C. T. Corporation
314 North Broadway
St. Louis, Missouri 63101

Office and Post Office Address
445 Park Avenue
New York, New York 10022

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

----------X

LOCAFRANCE U.S. CORPORATION, :

Plaintiff, : COMPLAINT

-against- : Index No.

KAC-DUS WAREHOUSE, :

Defendant. :

----------X

Plaintiff, by its attorneys, REGAN GOLDFARB HELLER WETZLER & QUINN, complaining of Defendant, alleges as follows:

1. Plaintiff is a Corporation organized and existing under and by virtue of the laws of the State of Delaware having at all relevant times herein maintained its principal place of business at 919 Third Avenue, in the City, County and State of New York and now maintaining an office at 20 Woodsbridge Road, Katonah, New York.

2. Upon information and belief, Defendant KAC-DUS WAREHOUSE ("Defendant") is a Corporation organized and existing under and by virtue of the laws of the State of Missouri with offices at 4700 Deramus Avenue, Kansas City, Missouri.

3. On or about August 15, 1974, Plaintiff and Defendant entered into a written agreement (a copy of which is annexed hereto as Exhibit "A") whereby Plaintiff leased to Defendant the equipment described in the said written agreement.

4. Pursuant to the aforesaid written agreement Defendant obligated itself to pay to Plaintiff monthly payments of $463.50 for a period of thirty-six (36) months, commencing on or about August 15, 1974.

5. Although Plaintiff has in all respects performed its obligations under the said written agreement, Defendant has failed and refused to pay Plaintiff the monthly rental payments due and owing under the said written agreement since in or about January, 1975 thereby placing Defendant in default under Section "17" thereof.

6. Defendant has been advised of, but has not cured, the aforesaid defaults and continues to refuse to make the aforesaid monthly rental payments.

7. By reason of the foregoing, there is now due and owing to the Plaintiff from Defendant the sum of $14,368.50.

WHEREFORE, Plaintiff demands judgment against Defendant in the sum of $14,368.50 together with interest thereon from January 15, 1975, the costs and disbursements of this action and for such other and further relief as the Court may deem just and proper.

Dated: New York, New York
August 27, 1976

Yours, etc.

REGAN GOLDFARB HELLER WETZLER
& QUINN
ATTORNEYS FOR PLAINTIFF
445 Park Avenue
New York, New York 10022
(212) 754-3000

SUB Lease No. G77222/000 [illegible] 249a Commitment No. [illegible]

NAME AND ADDRESS OF LESSOR/SUBLESSOR:
Commodity Systems, Inc.
West 34th Street
New York, New York 10001
Incorporated in State of: Delaware

NAME AND ADDRESS OF SUBLESSEE:
Kas-Dus Warehouse
4700 Deramus Avenue
Kansas City, Missouri 64116
Incorporated in State of: Missouri

DESCRIPTION			
Towmotor Forklift	302S	670050	
"	502S	660204	
"	502S	670307	

LOCATION OF EQUIPMENT: STREET: 4700 Deramus Avenue; CITY: Kansas City; COUNTY: Clay; STATE: Missouri

RENTAL COMMENCEMENT DATE: 11/13/1979

BASE TERM OF LEASE:	PERIOD	NUMBER OF RENTALS	AMOUNT OF EACH RENTAL	SALES TAXES	TOTAL	AMOUNT OF SECURITY DEPOSIT
36 Months	36 Months	36	$450.00	$13.50	$463.50	$ --
RENTALS PAYABLE MONTHLY ☒ QUARTERLY ☐						ADVANCE RENTAL(S) $463.50 REPRESENTING PAYMENT FOR THE 1st RENTAL
Renewal Rental Payable Annually in Advance						PAYABLE AT THE SIGNING OF THIS LEASE

Section 1. LEASE. Lessor hereby leases to Lessee, and Lessee hereby rents from Lessor, subject to the terms, conditions and rents hereinafter set forth, the personal property listed above, or partially scheduled, in the schedule attached hereto, made a part hereof and marked Schedule "A" together with all replacement parts, additions, repairs and accessories incorporated and/or affixed to (the "Equipment"). It is understood that this Lease shall be effective and binding upon Lessor only when executed by Lessor ("Commitment Date") and that the term of this lease shall commence upon [illegible] (the "Rental Commencement Date").

Section 2. SELECTION AND ORDERING OF EQUIPMENT. Lessee has requested equipment of the type and quantity specified above or in the Schedule A attached [illegible] and no limitation as to Equipment or any other matter [illegible] shall in any way affect Lessee's duty to pay the rent and perform its other obligations as set forth in this Lease.

Section 3. NO WARRANTIES BY LESSOR. Lessee acknowledges that Lessor, Lessor's successor, or Lessor's assignee is not the manufacturer of the Equipment, the agent of the manufacturer nor the distributor thereof and that Lessee has selected [illegible] the Equipment leased hereunder prior to having requested the Lessor to purchase it for leasing to the Lessee [illegible]. LESSEE ALSO ACKNOWLEDGES THAT LESSOR HAS MADE AND MAKES NO WARRANTIES OR REPRESENTATIONS OF WHATSOEVER NATURE DIRECT OR INDIRECT, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, AS TO THE SUITABILITY, DURABILITY, FITNESS FOR USE, MERCHANTABILITY, DESIGN OR CONDITION OF, OR AS TO THE QUALITY OR CAPACITY OF THE MATERIAL, OR WORKMANSHIP, OR MARKETABILITY, QUALITY OR OTHERWISE OF THE EQUIPMENT, OR OF THE ABILITY OF THE SUPPLIER TO PERFORM, OR THAT THE EQUIPMENT WILL SATISFY THE REQUIREMENTS OF ANY LAW, RULE, SPECIFICATION OR CONTRACT WHICH PROVIDES FOR SPECIFIC DELIVERY OR OPERATORS OR SPECIAL METHODS, IT BEING AGREED THAT ALL SUCH RISKS, AS BETWEEN LESSOR AND LESSEE, ARE TO BE BORNE BY LESSEE AT ITS SOLE RISK AND EXPENSE. Lessee specifically waives all rights of any kind to make a claim against the Lessor, Lessor's successor or Lessor's assignee herein for breach of any warranty of any kind whatsoever.

3.1 ASSUMPTION OF ALL RISK BY LESSEE. Inasmuch as Lessee has selected both the Equipment [illegible] and has agreed to assume all risk of loss resulting from the [illegible] any reason whatsoever (including force majeure), it is understood and agreed that Lessee irrevocably waives any claim against Lessor for any loss or damage resulting from any cause, circumstance or event of whatsoever nature including but not limited to, failure of or delay in delivery, delivery to the wrong place, delivery of improper Equipment, damage to the Equipment, defect or unfitness of the Equipment or the installation of the same, governmental regulation, Act of God, strike, embargo or any other cause, circumstances, whether of like or unlike nature and, in connection therewith, Lessee agrees that any of the same shall not relieve Lessee of the obligations to pay rent or of any other obligation under this Lease. Lessor, Lessee's successor or Lessor's assignee, shall have no obligation to install, erect, test, adjust or service the Equipment. Lessee shall, at its own cost and expense; (a) pay all charges and expenses in connection with the operation of all Equipment (b); comply with all laws, ordinances, regulations, requirements and rules with respect to the use, maintenance and operation of the Equipment; (c) make all repairs and replacements required to be made to maintain the Equipment in good condition, reasonable wear and tear excepted.

Section 4. DELIVERY; INSPECTION

Install the Equipment, Lessee agrees to take any and all such action, including without limiting the generality of the foregoing, alterations or modifications, structural or otherwise, to the ...ises in which the Equipment shall be located. Lessee shall inspect the Equipment within eight (8) business days after its arrival at the address set forth above, and if in good working order and repair ...accept the Equipment by executing and delivering to Lessor a dated notice of receipt in the form annexed hereto and labeled "Delivery Acceptance Receipt". Lessee hereby authorizes Lessor to ...to this Lease the serial numbers of and other identification data of each item of Equipment as delivered. If, Lessee shall determine that the Equipment is not in good working order and repair it ...within such eight day period, shall notify Lessor in written notice specifying the defect or other objection to the Equipment and stating that it is rejecting the Equipment. In the event that Lessee gives ...rejection notice referred to in the immediately preceding sentence, Lessee shall, on demand by Lessor, pay Lessor any amount theretofore paid by Lessor in respect of the purchase of such ...ipment. In the event that Lessor has previously paid an amount in respect of the purchase of such Equipment, then the amount to be paid to Lessor shall include interest computed at the rate of ...per annum from the date of payment of such amount by Lessor to the date of payment by Lessee. Upon such payment Lessee shall be subrogated to Lessor's claim, if any, against the manufacturer ...other supplier of the Equipment, provided that Lessee shall indemnify and save Lessor, Lessor's successor or Lessor's assignee, harmless from any and all loss, damage, cost, expense, including attorney's ...and liability to the manufacturer or other supplier of the Equipment resulting, directly or in anyway indirectly, from the wrongful rejection of the Equipment or from failure to comply with the duties ...and upon a merchant buyer by the Uniform Commercial Code, including without limitation, Section 2-602 thereof. However, if within such eight day period Lessee shall not have executed and delivered ...to Lessor a Delivery Acceptance Receipt nor shall have given written notice to Lessor rejecting the Equipment, Lessee agrees that it shall be conclusively presumed, as between Lessor and Lessee, that ...he has fully inspected the Equipment, that the Equipment is in full compliance with the terms of this Lease and in good condition and repair, and that Lessee is satisfied with and has accepted the ...Equipment. If, for any reason whatsoever, the Equipment shall not have been delivered to Lessee at the address set forth above and accepted by Lessee in accordance with this Section 4 by the 90th day ...after the Requested Date of Delivery then Lessor shall have the option to cancel this Lease. If Lessor shall cancel this Lease, Lessee shall, on demand by Lessor, pay Lessor any amount theretofore paid ...owing by Lessor in respect of the purchase of such Equipment. In the event that Lessor has previously paid an amount in respect of the purchase of such equipment, then the amount to be paid to ...Lessor shall include interest computed at the rate of ...% per annum from the date of payment of such amount by Lessor to the date of payment by Lessee. Upon such payment Lessee shall be subro-...gated to Lessor's claim, if any, against the manufacturer or other supplier of the Equipment, provided that Lessee shall indemnify and save Lessor, Lessor's successor or Lessor's assignee, harmless from ...and all loss, damage, cost, expense, including attorney's fees, and liability to the manufacturer or other supplier of the Equipment.

...ection 5. CLAIMS AGAINST SUPPLIER. Lessor agrees to use its best efforts to obtain Supplier's agreement that all representations, warranties and agreements, if any, made by ...Supplier to Lessor or Lessee may be enforced by Lessor and/or Lessee jointly and severally; provided, however, that Lessee agrees that it shall make no claim against Supplier except within three days ...after notice to Lessor and provided, further, that Lessee shall not be permitted to exercise such right in the event that it shall be in breach of any of the terms, provisions or conditions of this

...E ADDITIONAL PROVISIONS ON THE REVERSE SIDE HEREOF ARE INCLUDED IN, AND MADE A PART OF, THIS LEASE. THIS ...A NON-CANCELLABLE LEASE FOR THE TERM INDICATED ABOVE.

Rider(s) No. 1

SUB-
NAME OF LESSEE: a Kac-Dus Warehouse

X Harold W Baker P.T.
Authorized Signature

X _____ _____
Authorized Signature Title

X _____ _____
Authorized Signature Title

..., 9/Sept. '74 ..... 19....

Paul Caudle
...Executive Secretary or Secretary-Treasurer
Gen. Mgr.

RISK OF LOSS OR DAMAGE. All risks of loss, theft, destruction and damage to the Equipment from whatever cause, are assumed by Lessee, who shall be responsible therefor throughout the t
in the event of loss, theft, destruction or damage of any kind whatsoever from any and every cause whatsoever to any item or items or all of the Equipment, Lessee, at the option of Lessor, shall promptly at the t
and at its sole cost and expense:

the same in good repair, condition and working order; or

the same with Equipment of the same make and model, satisfactory to Lessor, and in good repair, condition and working order; or

Equipment or a major portion thereof is determined by Lessor to be lost, stolen, destroyed or damaged beyond repair, pay Lessor the applicable amount of all unpaid rentals accruing thereunder the future t
Lease shall thereupon be deemed terminated. Lessee's obligations to perform under this section shall not be excused by Lessor's inability to obtain insurance proceeds for the loss, theft, destruction or dama
Lessee to subscribe, by indication or otherwise, the collection of such proceeds or of any claim against any person for loss, theft, destruction or damage to the Equipment.

Lessor shall have received the insurance proceeds on account of any loss, theft, destruction or damage to the Equipment and if Lessor, in its sole judgment, shall be satisfied that Lessee has properly performed t
duties by it under this Section 11, Lessor shall pay over to Lessee out of such proceeds the actual amounts expended by Lessee under subparagraphs (a), (b) or (c), as the case may be, of this section. In no ev
required to pay Lessee an amount greater than the net amount of the insurance proceeds received by it.

damage to any of the Equipment shall impair any obligations of the Lessee under this Lease, including without limitation, the obligation to pay rent which shall continue in full force and effect until cancellat
of this Lease.

INDEMNITY. Lessee assumes all responsibility for the manufacture, selection, purchase, delivery, possession, use, condition, operation, maintenance, repair, testing and/or return of the Equipment, and,
hereby, the liability, if any, for personal injuries and property damage howsoever arising from or incidental thereto, whether such injuries be to agents or employees of Lessee or to third parties and whet
to the property of Lessee or of others. Lessee will indemnify and save Lessor, Lessor's successor and Lessor's assignee and their agents, servants, successors and assigns, harmless of, from and against all claims, cos
(including reasonable fees of attorneys and accountants) liabilities, losses and damages resulting directly or in any way indirectly from or pertaining to the Equipment or the manufacture, selection, purchase, delivery, p
or leasing, but not limited to, latent and other defects and whether or not discoverable by it), use, operation, maintenance, repair, testing and/or return thereof and the recovery of claims under insurance policie

SECURITY DEPOSIT. Simultaneously with the execution of this Lease, Lessee is depositing with Lessor, in addition to an amount at least equal to the first installment of rent as specified in Section
provided on the front of this Lease under the caption "Amount of Security Deposit", which sum shall be retained by Lessor as security for the payment and performance of Lessee's obligations under this Lease. In
the event Lessee defaults in respect of any of the terms, provisions and conditions of this Lease, including, but not limited to, the payment of rent and additional rent, Lessor, without limiting the of its rights un
or use, apply or retain the whole or any part of the security so deposited to the extent required for the performance of any obligations as to which Lessee is in default and, in any such instances, Lessee shall on demand
sums to Lessor so that Lessor may at all times be secured by the full amount specified on the front of this Lease. In the event that Lessee shall fully and faithfully comply with all of the terms, provisions, covenan
of this Lease, the security shall be returned to Lessee after the date fixed as the end of this Lease and after surrender of the Equipment in accordance with Section 11 hereof. In the event of an assignment of t
Lessor, Lessor shall have the right to transfer the security to its assignee and Lessor shall thereupon be released by Lessee from all liability for the return of such security; and it is agreed that the provisions hereof sh
to equipment rental of the security to a new assignee. Lessee covenants that it will not assign or encumber or attempt to assign or encumber the monies deposited herein as security and that neither Lessor nor its succe
shall be bound by any such assignment, encumbrance, attempted assignment or attempted encumbrance.

TAXES. Lessee shall pay all costs, expenses, fees and charges incurred in connection with the use and operation of the Equipment during the Lease term hereunder. Lessee shall pay any and all sales, use, exci
taxes, documentary, personal property and other taxes, and declare, report and pay all assessments and other governmental charges whatsoever by whomsoever payable on or relating to the Equipment and the purchase, r
payments on thereof (other than federal or state income tax payable by Lessor) as and when the same shall become due and payable. In addition, Lessee shall keep the Equipment free and clear of all levies, liens a
Lessor shall have no obligation to dispute or contest the imposition or collection or the basis of computation of any such tax or other governmental charge payable by Lessee.

COLLECTION COSTS. If any of the last installments of rents and amounts of additional rent provided for herein are not paid within (10) days after such installments shall be due, Lessee agrees to p
Lessor's option, in addition to any and all other remedies provided in this Lease or available at law or in equity, as and for Lessor's costs of collection, interest at the rate of 15% per annum on all sums not paid wh
due to Lessor of the rights granted to it under this Section 15 shall not be deemed a waiver of any of the rights and/or remedies otherwise granted to it under this Lease, including, without limitation, the rig
under Section 17 hereof, to declare the Lessee in default.

ASSIGNMENT; SUBLEASE.

15.1 BY LESSEE. Lessee shall not assign, transfer, pledge or otherwise dispose of this Lease or its interest hereunder nor enter into any sublease, lend any of the Equipment, or permit it to be used by anyone oth
than its authorized employees.

15.2 BY LESSOR. Lessee acknowledges notice of Lessor's intention to assign Lessor's interest in this Lease, and Lessee agrees that Lessor may assign this Lease and/or mortgage the Equipment, in whole or in pa
to Lessee but upon receiving any notice thereof Lessee shall promptly acknowledge receipt thereof in writing. Each such assignee and/or mortgagee shall have all of the rights, but none of the obligations of Lessor un
with the obligation to continue to keep the Equipment subject to this Lease in accordance with the terms and conditions hereof. Lessee agrees that it shall not assert against any assignee or mortgagee of Lessor a
defense, assessment, claim or counterclaim that Lessee may have against Lessor and Lessee shall remain liable for its obligations hereunder in spite of any such assignment or mortgage. Lessor's assignee or mortgagee m
the Lease on exercising, as the case may be, the same terms and conditions. Upon any assignment or reassignment of this Lease by Lessor or Lessor's successor in interest, as the case may be, Lessee shall, at t
request of any of the successors in interest, as the case may be, execute, acknowledge and deliver a statement in writing certifying that this Lease is unmodified and in full force and effect (or if there have been modific
that it is in full force and effect as modified and stating the modifications), and the dates to which the rents and other charges have been paid in advance, and if there are any defaults claimed by Lessee. Such stateme
shall be an agreement by Lessee to make all future payments of rents and other charges under the Lease directly to Lessor or Lessor's successor in interest, as the case may be.

DEFAULT. If Lessee shall default in the payment of any sums to be paid hereunder and such default shall continue for more than ten (10) days after Lessor has given notice thereof (except that Lessee sh
be in notice of default in the case of non-payment or late payment of rent), or if Lessee has breached any other provision of this Lease, or if a petition in bankruptcy or for reorganization or for the appointment of
or the filing of any part of the property of Lessee; or any other proceedings for the relief of debtors shall be filed by or against Lessee or if Lessee shall make a general assignment for the benefit of creditors, or suspe
of any act amounting to business failure, or if an attachment shall be levied or a tax lien filed against any of Lessee's property, or if Lessee shall make a voluntary or involuntary assignment or transfer of all,
or any of its property, or an unauthorized assignment of its interest hereunder, or if Lessee, in Lessor's sole opinion, shall undergo any material change as to increase Lessor's risk, including any eventuality enumer
under the terms of this Lease, then in any of such events, Lessor, at its option, may declare the Lessee to be in default, in which case Lessor shall have the right to exercise any one or more of the following remedies:

Lessor may recover from Lessee as immediately due and payable the entire amount of unpaid rentals for the balance of the term of this Lease, together with any and all other charges which may be then or which beca
due, including without limitation, costs of collection and attorneys' fees (not to exceed 20% of the amount collected);

Lessor may terminate this Lease and/or within thirty (30) days thereof, demand a return of the Equipment to the destination specified by Lessor, freight prepaid by Lessee;

Lessor, without demand, or notice to or consent of Lessee, and without any court order or other process of law, may take possession of any or all items of Equipment, wherever the Equipment may be located for th
purpose and may enter any premises owned or leased by Lessee without liability to any damages occasioned by such taking possession. Lessor may thereafter hold the Equipment free and clear of this Lease and of any rights of Les
hereunder or retaking of the Equipment shall not constitute termination of this Lease. Lessor may sell all or any part of the Equipment free and clear of any claims of Lessee at private sale or sales, upon ten (10) da
notice to Lessee, at such price or prices and upon such terms as Lessor may elect, or at public sale or sales at which Lessor may bid for and purchase any or all of the Equipment. Lessor shall also have the right
any of the Equipment free and clear of any claims of Lessee, upon ten (10) days prior written notice to Lessee, at such rental or rentals and upon such terms and conditions as Lessor may elect. Lessee agrees that any
and leases of the Equipment shall have the right to enter upon Lessee's premises to inspect such Equipment and that Lessor may conduct its sales and/or leasing transactions on Lessee's premises. The net proceeds
of any sales and/or the net rentals received under any new leasings, less 5% of the Total Cost of the Equipment as the case may be, shall be applied (i) first to the payment of all costs and expenses of every ki
incurred in connection with or incidental to the holding, preparing for sale or lease and the selling or leasing of the Equipment, including attorney's fees, (not to exceed 20% of the amount collected) and then (ii) to

of the entire term provided for herein and then remaining unpaid, the Lessee shall remain liable to the Lessor for the payment of any deficiencies, together with interest thereon computed at the rate of fifteen per
sum. The surplus, if any, shall be liquidated damages for the breach of this agreement and shall be payable to Lessor.

or may pursue any other remedy at law or in equity.

If such item or items of Equipment with respect to which Lessor elects to terminate this Lease, this Lease shall continue in full force and effect and Lessee shall be bound to continue to pay and perform its obligati
repossession or resale of any item of Equipment shall not bar an action for a deficiency as above provided, and the bringing of an action for the entry of judgment against the Lessee shall not bar the Lessor's right
items of Equipment.

OPTION TO RENEW. Lessee shall have the option to renew this Lease with respect to the Equipment as an entirety for such additional term, if any, and for such rental as is specified on the front
that such option shall be exercisable only upon Lessee's giving written notice to Lessor of Lessee's intent to so renew. Lessee's renewal notice shall be given during the third month preceding the expiration of
this Lease and shall be accompanied by Lessee's check in an amount equal to the aggregate rentals payable by Lessee during the first year of the renewal period.

SURRENDER. At the expiration of this Lease or upon demand by Lessor made pursuant to paragraph (5) of Section 17 hereof, or upon the termination of this Lease in any manner whatever, Lessee sh
and ship the same to the destination specified by Lessor and by such carrier as Lessor shall designate. Lessee shall return the Equipment in good operating order and repair. Any and all transportation ex
returning of the Equipment as aforesaid shall be borne by the Lessee. Transportation costs shall be deemed to include insurance for the full replacement value of the Equipment without consideration for depreciat

MISCELLANEOUS.

REMEDIES CUMULATIVE. Lessor may pursue any remedy available to it at law or in equity. Each and every right and remedy hereby specifically given to Lessor may be exercised from time to time
as often and in such order as may be deemed expedient by Lessor. All such rights and remedies shall be cumulative and the exercise of one shall not be deemed a waiver of the right to exercise any other or
to by Lessor in the exercise of any such power or remedy and no renewal or extension of any payments due hereunder shall impair any such power or remedy or shall be construed to be a waiver of any default
term.

NON-CANCELLABILITY. The Lease hereunder shall continue in full force and effect and be non-cancellable, except in accordance with its terms for the rental term herein provided.

LESSOR'S RIGHT TO CURE DEFAULTS. In the event of failure of Lessee to pay any costs, expenses, fees, charges or taxes (as provided in Section 11 above) or to procure or maintain insurance
(as in 13 above), or failure to pay or perform any other obligation hereunder, Lessor shall have the right, but shall not be obligated, upon ten (10) days prior notice to Lessee (except in Lessee's place and stead,
he shall repay Lessor the cost thereof with the next payment of rent as additional rent together with interest (at the rate of 15% per annum) from the date of any such payment by Lessor. The exercise by Les
of its option to it under this subsection shall not be deemed a waiver of any of the rights and/or remedies otherwise granted to it under this Lease, including, without limitation, the right, granted to it under Section
of the Lessee in default.

ENTIRE AGREEMENT. This Lease, together with the schedule attached hereto, if any, constitutes the entire agreement between the parties hereto, and can only be modified by further agreement
in writing executed by both parties. No representations, warranties or agreements, oral or written, expressed or implied have been made by either party hereto with respect to the Lease hereunder or to the Equipment covered here
by, except as set forth herein.

COOPERATION. Lessee shall provide Lessor with such corporate resolutions, opinions of counsel, certificates and other documents as Lessor may reasonably request from time to time. Lessee shall execute
and deliver, including without limitation, financing and continuation statements under the Uniform Commercial Code as Lessor shall require for filing or recording this Lease or for effecting a release or assignment
hereof, in the Secretary of State of the state of incorporation or residence of Lessee, the Secretary of State of the state in which Lessee's principal office is located (if different from the state of incorporation or residence
of Lessee), the County Clerk of the county in which the Equipment leased hereunder is located and used and such other places as Lessor shall deem necessary or desirable. Lessee is hereby authorized to file
any of Lessee or any of its subsidiaries. Whenever requested by its assignee, or a third party, Lessor will join with Lessee in executing financing statements pursuant to the Uniform Commercial

AGREEMENT AS LEASE; VENUE; SERVICE OF PROCESS. IT IS HEREBY STIPULATED BY AND BETWEEN LESSOR AND LESSEE THAT THIS AGREEMENT SHALL BE DEEM
AGREEMENT. IT IS FURTHER STIPULATED THAT SUCH LEASE WAS MADE IN NEW YORK COUNTY, NEW YORK, REGARDLESS OF THE ORDER IN WHICH THE SIGNATURES OF THE PARTIES SHALL BE AFF
THIS LEASE SHALL BE INTERPRETED AND THE RIGHTS AND LIABILITIES OF THE PARTIES DETERMINED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK. AT THE OPTION OF THE LESSOR
OF EXECUTING THIS LEASE, LESSEE HEREBY AGREES THAT ALL ACTIONS OR PROCEEDINGS ARISING, DIRECTLY OR INDIRECTLY, FROM THIS LEASE SHALL BE LITIGATED ONLY IN COURTS LOCAT
IN NEW YORK, AND LESSEE HEREBY CONSENTS TO THE JURISDICTION OF ANY COURT LOCATED WITHIN THE STATE OF NEW YORK AND WAIVES PERSONAL SERVICE OF ANY AND ALL P
CONSENTS THAT ALL SUCH SERVICE OF PROCESS MAY BE MADE BY CERTIFIED OR REGISTERED MAIL, RETURN RECEIPT REQUESTED, DIRECTED TO LESSEE AT THE ADDR
SO MADE SHALL BE COMPLETE FIVE (5) DAYS AFTER THE SAME HAS BEEN POSTED AS AFORESAID.

TAX TREATMENT. No representation is, or has been, made as to the treatment for income tax purposes of payments hereunder, it being understood that whether a particular
item, as a lease depends upon the facts and circumstances in each case.

AGREEMENTS AND COUNTERPARTS. This Lease may be executed in any number of separate counterparts, each counterpart constituting an original. The parties
terms of this agreement as may be required at any time in order to comply with the provisions of any applicable law governing the recording or filing of this agreement or
of the or any political or governmental subdivision of any state. Lessee agrees to pay the fees and charges imposed by law for such mandatory recording or filing and the necessary expenses of the Les
recording or filing.

TIME TO SURRENDER AN EXTENSION. If, upon the expiration of the full term of this Lease as above provided for, Lessee does not immediately return the Equipment to Lessor
as herein, then the Equipment shall continue to be held and leased under and in accordance with the conditions in this agreement contained, and this agreement shall thereupon be
hereof by Lessee or Lessor by fifty (50) days notice in writing to the other may terminate it, whereupon Lessee shall surrender delivery the Equipment to Lessor

HEADINGS. The section headings contained herein have been inserted as a matter of convenience only and shall not be deemed to affect the interpretation of the text.

SEVERABILITY. If a provision hereof or any remedy herein provided for shall be invalid under any applicable law, such provision shall be inapplicable and deemed omitted, but the same shall not
invalidate the remainder of this agreement which shall be construed to effect the maximum intent thereof.

NOTICES. Any notice or other communication, including rent payments, authorized or required by this Lease shall be made to the parties hereto in writing at the addresses shown set forth on the
first page hereof or at either party may designate to the other by notice similarly served, by personal delivery or by first class mail, postage prepaid. All notices and other communications further than sent
to the office of the Post Office.

INTEREST. In the event that the rate of interest at any time payable hereunder by either party to the other shall exceed the legal amount so payable, then the interest to be paid shall
be the legally permissible.

NO WAIVER BY LESSOR. Neither this Lease nor any modification hereto, oral or written, shall be deemed binding upon Lessor unless executed by Lessor's Executive Vice President
or other officer of Lessor shall be deemed to have the authority to bind Lessor in any respect.

RIDER NO. 1 TO SUBLEASE AGREEMENT
NO. 057/82/000 126/4 BETWEEN PRODATA
SYSTEMS LEASING, INC., SUBLESSOR AND
KAO-DEN WAREHOUSE, SUBLESSEE

The printed part of this Sublease is hereby amended, modified and supplemented as follows: To the extent that the printed part of the Sublease and this Rider are compatible, each shall be deemed in addition to and in expansion of, the other. Wherever there is any conflict between this Rider and the printed part of this Sublease, the provisions of this Rider are paramount and the Sublease shall be construed accordingly.

1. For purposes of this Sublease only, and without in any way changing any of the terms, provisions, conditions and covenants in the printed part of this Sublease or this Rider, all references in the printed part of this Sublease to "Lessor" shall mean "Sublessor", all references to "Lease" shall mean "Sublease" and all references to "Lessee" shall mean "Sublessee".

2. This Sublease, and the rights of Sublessor and Sublessee hereunder, shall be subordinate in all respects to an Agreement of Lease No. 057/82/000 126/0 (the "Prime Lease") between Locafrance U. S. Corporation, with a place of business at 919 Third Avenue, New York, New York ("Locafrance" as lessor, and Sublessor as lessee, and to the rights of Locafrance thereunder.

3. Sublessee hereby acknowledges Sublessor's right to assign its interests under this Sublease to Locafrance, and that it shall do so and consents to such assignment, and in consideration of this Sublease, the Sublessee agrees that its obligation to pay directly to Locafrance the amounts (whether designated as rentals or otherwise) which become due as set forth in the Sublease shall be absolutely unconditional, and it promises so to pay the same to Locafrance at its address hereinbefore stated, notwithstanding any defense, set-off or counterclaim whatsoever, whether by reason of breach of the Sublease or otherwise, which it may or might now or hereafter have as against the Sublessor (the Sublessee reserving its right to have recourse directly against the Sublessor on account of any such defense, set-off or counterclaim).

4. Sublessor and Sublessee each recognize and agree that Locafrance is the owner of the Equipment and the Equipmert shall at all times remain the property of Locafrance, and that neither Sublessor or Sublessee has any right, title, interest or equity in the Equipment whatsoever except as may be set forth in the Prime Lease and Sublease. Sublessee shall at all times protect and defend, at its own cost and expense, the title of Locafrance from and against all claims, liens and legal process of creditors of Sublessee and Sublessor, and keep all the Equipment free and clear from all such claims, liens and process. The Equipment is, and shall at all times remain, personal property irrespective of the way it may be affixed to the realty, and Sublessee shall maintain each item of Equipment so that it may be removed from any building in which it is placed without damaging such building. Sublessee will so notify any landlord or [illegible] of the premises in which the Equipment is kept and will obtain the agreement thereto by all such landlords and mortgagees. If at any time during the term hereof Locafrance supplies Sublessee with labels, plates or other markings, stating that the Equipment is owned by Locafrance, Sublessee shall affix and keep the same upon a prominent place on each and every item comprising the Equipment.

5. Any default by Sublessor under the Prime Lease shall be construed to be a default by Sublessee under this Sublease thereby entitling Locafrance to exercise and to avail itself of all of its rights and remedies under the Prime Lease; provided, however, if Sublessee is not then in default under this Sublease, Sublessee may, if Locafrance consents in writing, continue to have the quiet use and enjoyment of the Equipment on such terms and conditions, including the payment of rentals, as may be satisfactory to Locafrance.

6. Notwithstanding the sublease of the Equipment under this Sublease, it is understood and agreed that Sublessor shall be and remain primarily and not secondarily liable to Locafrance for the full and prompt payment and performance by Sublessor of all of its obligations, accrued and executory, under the Prime Lease.

INTERMODAL SYSTEMS LEASING, INC.

By _____

Sublessee: KAC-DUS WAREHOUSE

By James W Baker

Optional Purchase Option Provision

Provided that all lease rental payments and all other payments required to be made under the Sublease have been made by Sublessee, and Sublessee has not been and is not then, in default under the terms of the Sublease, or if Sublessee has been, or is, in default under the terms of this Sublease such default has been cured, or waived by Sublessor and Locafrance, at the expiration of the base term of this Sublease, Sublessee shall have the option to purchase all of Sublessor's right, title and interest in the Equipment at a purchase price equal to the then fair market value of the Equipment determined by an independent appraiser selected by Locafrance. The cost of such appraisal shall be borne by Sublessee. The option shall be exercised by Sublessee giving written notice to Locafrance and to Sublessor that it is exercising the option granted herein, which notice shall include the date this Sublease expires. On such date the option price shall be due and payable by Sublessee to Sublessor, upon receipt of which Sublessor shall deliver to Sublessee a Bill of Sale transferring all of Sublessor's right, title and interest in the Equipment to Sublessee.

SUA [illegible] 057/2/000.K '1

Commitment date [illegible]

NAME AND ADDRESS OF LESSOR/SUBLESSOR:
[illegible]modal Systems Leasing, Inc.
[illegible] West 34th Street
[illegible] York, New York 10001
[illegible] Delaware

NAME AND ADDRESS OF [illegible] LESSEE/SUBLESSEE:
Kane-Dee Warehouse
4700 Deramus Avenue
Kansas City, Missouri 64116
Incorporated in State of: Missouri

[illegible] Conveyor Feeder	3025	670050	
" "	5025	000004	
" "	5025	670307	

LOCATION OF EQUIPMENT: STREET: 4700 Deramus Avenue; CITY: Kansas City; COUNTY: Clay; STATE: Missouri

[illegible] RENTAL COMMENCEMENT DATE: 11/19/1977

BASE TERM OF LEASE:	PERIOD	NUMBER OF RENTALS	AMOUNT OF EACH RENTAL	SALES TAXES	TOTAL	AMOUNT OF SECURITY DEPOSIT
[illegible] Months	36 Months	36	$450.00	$13.50	$463.50	$ —
RENTALS PAYABLE MONTHLY ☒ QUARTERLY ☐						ADVANCE RENTAL(S) $463.50 REPRESENTING PAYMENT FOR THE 1st RENTAL[illegible]
Renewal Rental Payable Annually In Advance						PAYABLE AT THE SIGNING OF THIS LEASE

Section 1. LEASE. Lessor hereby leases to Lessee, and Lessee hereby rents from Lessor, subject to the terms, conditions and rents hereinafter set forth, the personal property listed above, or [illegible]rately scheduled, in the schedule attached hereto, made a part hereof and marked Schedule "A" together with all replacement parts, additions, repairs and accessories incorporated and/or affixed [illegible]to (the "Equipment"). It is understood that this Lease shall be effective and binding upon Lessor only when executed by Lessor ("Commitment Date") and that the term of this lease shall [illegible]mence upon [illegible] (the "Rental Commencement Date").

Section 2. SELECTION AND ORDERING OF EQUIPMENT. Lessee has requested equipment of the type and quantity specified above or in the Schedule A attached [illegible]

[illegible] and no [illegible]ertation as to Equipment or any other matter [illegible] shall in any way affect Lessee's duty to pay the rent and perform its other obligations as set forth in this Lease.

Section 3. NO WARRANTIES BY LESSOR. Lessee acknowledges that Lessor, Lessor's successor, or Lessor's assignee is not the manufacturer of the Equipment, the agent of the [illegible]facturer nor the distributor thereof and that Lessee has selected [illegible] the Equipment leased hereunder prior to having requested the Lessor to purchase it for leasing to the Lessee [illegible]. LESSEE ALSO ACKNOWLEDGES THAT LESSOR HAS MADE AND MAKES NO WARRANTIES OR REPRESENTATIONS OF WHAT-[illegible]NATURE DIRECT OR INDIRECT, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, AS TO THE SUITABILITY, DURABILITY, FITNESS FOR USE, MERCHANTABILITY, DESIGN CONDITION OF, OR AS TO THE QUALITY OR CAPACITY OF THE MATERIAL, OR WORKMANSHIP, OR MARKETABILITY, QUALITY OR OTHERWISE OF THE EQUIPMENT, OR OF THE ABILITY THE SUPPLIER TO PERFORM, OR THAT THE EQUIPMENT WILL SATISFY THE REQUIREMENTS OF ANY LAW, RULE, SPECIFICATION OR CONTRACT WHICH PROVIDES FOR SPECIFIC [illegible]IVERY OR OPERATORS OR SPECIAL METHODS, IT BEING AGREED THAT ALL SUCH RISKS, AS BETWEEN LESSOR AND LESSEE, ARE TO BE BORNE BY LESSEE AT ITS SOLE RISK AND [illegible]SE. Lessee specifically waives all rights of any kind to make a claim against the Lessor, Lessor's successor or Lessor's assignee herein for breach of any warranty of any kind whatsoever.

3.1 ASSUMPTION OF ALL RISK BY LESSEE. Inasmuch as Lessee has selected both the Equipment [illegible] and has agreed to assume all risk of loss resulting from the [illegible]ge resulting from any cause, circumstance or event of whatsoever nature including but not limited to, failure of or delay in delivery, delivery to the wrong place, delivery of improper Equipment, [illegible]ge to the Equipment, defect or unfitness of the Equipment or the installation of the same, governmental regulation, Act of God, strike, embargo or any other cause, circumstances, whether of like [illegible]ke-nature and, in connection therewith, Lessee agrees that any of the same shall not relieve Lessee of the obligations to pay rent or of any other obligation under this Lease. Lessor, Lessor's [illegible]ssor or Lessor's assignee, shall have no obligation to install, erect, test, adjust or service the Equipment. Lessee shall, at its own cost and expense; (a) pay all charges and expenses in connection with [illegible]peration of all Equipment (a); comply with all laws, ordinances, regulations, requirements and rules with respect to the use, maintenance and operation of the Equipment; (c) make all repairs and [illegible]lacements required to be made to maintain the Equipment in good condition, reasonable wear and tear excepted.

...Install the Equipment, Lessee agrees to take any and all such action, including without limitation the generality of the foregoing, alterations or modifications, structural or otherwise, as the ... in which the Equipment shall be located. Lessee shall inspect the Equipment within eight (8) business days after its arrival at the address set forth above, and if in good ... order and repair ... accept the Equipment by executing and delivering to Lessor a dated notice of receipt in the form annexed hereto and labeled "Delivery Acceptance Receipt". Lessee hereby authorizes Lessor to ... to this Lease the serial ... and other identification data of each item of Equipment as delivered. If, Lessee shall determine that the Equipment is not ... and working order and repair it within such eight day period, ... Lessor a written notice specifying the defect or other objection to the Equipment and stating that it is rejecting the Equipment. In the event that Lessee gives ... notice referred to in the immediately preceding sentence, Lessee shall, on demand by Lessor, pay Lessor any amount theretofore ... by Lessor in respect of the purchase of such ... In the event that Lessor has previously paid an amount in respect of the purchase of such Equipment, then the amount to be paid to Lessor shall include interest computed at the rate of ... per annum from the date of payment of such amount by L... the date of payment by Lessee. Upon such payment Lessee shall be subrogated to Lessor's claim, if any, against the manufacturer or supplier of the Equipment, provided that Lessee shall indemnify and save Lessor, Lessor's successor or Lessor's assigns, harmless from any ... liability to the manufacturer or other supplier of the Equipment resulting, directly or in any way ... the wrongful rejection of the Equipment or from failure to comply with the duties ... such a merchant under the Uniform Commercial Code, including without limitation ... Lessee. However, if within such eight day period Lessee shall not have executed and delivered to Lessor a Delivery Acceptance Receipt nor shall have given written notice to Lessor rejecting the Equipment, Lessee agrees that it shall be conclusively presumed, as between Lessor and Lessee, that ... has fully inspected the Equipment, that the Equipment is in full compliance ... terms of this Lease and in good condition and repair, and that Lessee is satisfied with and has accepted the ... If, for any reason whatsoever, the Equipment shall not have been ... to Lessee at the address set ... above and accepted by Lessee in accordance with this Section 4 by the fifth day ... the Requested Date of Delivery then Lessor shall have the ... cancel this Lease. If Lessor shall cancel this Lease, Lessee shall, on demand by Lessor, pay Lessor any amount theretofore paid ... by Lessor in respect of the purchase of such Equipment, in the event that Lessor has previously paid an amount in respect of the purchase of such equipment, then the amount to be paid to ... shall include interest computed at the rate of ... per annum from the date of payment of such amount by Lessor to the date of payment by Lessee. Upon such payment Lessee shall be subro... to Lessor's claim, if any, against the manufacturer or other supplier of the Equipment, provided that Lessee shall indemnify and save Lessor, Lessor's successor or Lessor's assignee, harmless from ... all loss, damage, cost, expense, including attorney's fees, and liability to the manufacturer or other supplier of the Equipment.

Section 5 CLAIMS AGAINST SUPPLIER. Lessor agrees to use its best efforts to obtain Supplier's agreement that all representations, warranties and ... agreements, if any, made by ... or Lessee may be enforced by Lessor and/or Lessee jointly and severally; provided, however, that Lessee agrees that it shall make no claim against Supplier ... unless ... days ... notice to Lessor and Supplier, further, that Lessee shall not be permitted to exercise such ... unless in the event that it shall be in breach of any of the terms, provisions or conditions of this

E ADDITIONAL PROVISIONS ON THE REVERSE SIDE HEREOF ARE INCLUDED IN, AND MADE A PART OF, THIS LEASE. THIS A NON-CANCELLABLE LEASE FOR THE TERM INDICATED ABOVE.

Rider(s) No. 1

SUB-
NAME OF LESSEE: Kac-Dus Warehouse

X Homer W Baker
Authorized Signature — Title

X
Authorized Signature — Title

X
Authorized Signature — Title

ED: 8/Sept. 74, 19

Gen. Mgr.

ASE ORIGINAL

Corporate Seal

[illegible]

LOCATION OF EQUIPMENT. [illegible]

USE, MAINTENANCE AND REPAIR. [illegible]

RISK OF LOSS OR DAMAGE. All risk of loss, theft, destruction and damage to the equipment from whatever cause, are assumed by Lessee, who shall be responsible therefor throughout the [illegible] In the event of loss, theft, destruction or damage of any kind whatsoever from any and every cause whatsoever to any item or items or all of the Equipment, Lessee, at the option of Lessor, shall promptly at the [illegible]

[illegible]ace the same in good repair, condition and working order; or

[illegible]place the same with Equipment of the same make and model, satisfactory to Lessor, and in good repair, condition and working order; or

[illegible] the Equipment or a material part thereof is determined by Lessor to be lost, stolen, destroyed or damaged beyond repair, pay Lessor the applicable amount of all unpaid rentals payable throughout the entire [illegible] and this Lease shall terminate as to such item. Lessor's obligations to perform under this section shall not be affected by Lessor's inability to obtain insurance proceeds for the loss, theft, destruction or dam[illegible] or be obligated to undertake, by litigation or otherwise, the collection of such proceeds or of any claim against any person for loss, theft, destruction or damage to the Equipment.

[illegible] Lessor shall have received the insurance proceeds on account of any loss, theft, destruction or damage to the Equipment and if Lessor, in its sole judgment, shall be satisfied that Lessee has properly performed [illegible] hereunder by it under this Section 11, Lessor shall pay over to Lessee out of such proceeds the actual amounts expended by Lessee under subparagraphs (a), (b) or (c), as the case may be, of this section. In no e[illegible] be required to pay Lessee an amount greater than the net amount of the insurance proceeds received by it.

[illegible]ct or damage to any of the Equipment shall impair any obligations of the Lessee under this Lease, including without limitation, the obligation to pay rent which shall continue in full force and effect until cancella[illegible] of this Lease.

INDEMNITY. Lessee assumes all responsibility for the manufacture, selection, purchase, delivery, possession, use, condition, operation, maintenance, repair, testing and/or return of the Equipment, and, [illegible] losses, claims, the liability, if any, for personal injuries and property damage howsoever arising from or incidental thereto, whether such injuries be to agents or employees of Lessee or to third parties and whe[illegible] be to the property of Lessee or of others, Lessee will indemnify and save Lessor, Lessor's successor and Lessor's assignee and their agents, servants, successors and assigns, harmless of, from and against all claims, c[illegible]uding reasonable fees of attorneys and accountants) liabilities, losses and damages resulting directly or in any way indirectly from or pertaining to the Equipment or the manufacture, selection, purchase, delivery, [illegible]ion (including, but not limited to, latent and other defects and whether or not discoverable by it), use, operation, maintenance, repair, testing and/or return thereof and the recovery of claims under insurance po[illegible]

[illegible]

SECURITY DEPOSIT. Simultaneously with the execution of this Lease, Lessee is depositing with Lessor, in addition to an amount at least equal to the first installment of rent as specified in Sectio[illegible] specified on the front of this Lease under the caption "Amount of Security Deposit", which sum shall be retained by Lessor as security for the payment and performance of Lessee's obligations under this Lease. It [illegible] the event Lessee defaults in respect of any of the terms, provisions and conditions of this Lease, including, but not limited to, the payment of rent and additional rent, Lessor, without limiting any of its rights un[illegible]ay use, apply or retain the whole or any part of the security so deposited to the extent required for the performance of any obligations as to which Lessee is in default and, in any such instances, Lessee shall on dema[illegible]h sums to Lessor so that Lessor may at all times be secured by the full amount specified on the front of this Lease. In the event that Lessee shall fully and faithfully comply with all of the terms, provisions, covena[illegible] of this Lease, the security shall be returned to Lessee after the date fixed as the end of this Lease and after surrender of the Equipment in accordance with Section 13 hereof. In the event of an assignment of [illegible] Lessor, Lessor shall have the right to transfer the security to its assignee and Lessor shall thereupon be released by Lessee from all liability for the return of such security; and it is agreed that the provisions hereof s[illegible] assignment made of the security to a new assignee. Lessee covenants that it will not assign or encumber or attempt to assign or encumber the monies deposited herein as security and that neither Lessor nor its succ[illegible]rs shall be bound by any such assignment, encumbrance, attempted assignment or attempted encumbrance.

TAXES. Lessee shall pay all costs, expenses, fees and charges incurred in connection with the use and operation of the Equipment during the Lease term hereunder. Lessee shall pay any and all sales, use, exc[illegible] stamp, documentary, personal property and other taxes, and declare, report and pay all assessments and other governmental charges whatsoever lawfully imposed on or relating to the Equipment and the purchase, [illegible] operation thereof (other than federal or state income tax payable by Lessor) as and when the same shall become due and payable. In addition, Lessee shall keep the Equipment free and clear of all levies, liens [illegible] Lessor shall have no obligation to dispute or contest the imposition or collection or the basis of computation of any such tax or other governmental charge payable by Lessee.

COLLECTION COSTS. If any of the installments of rents and amounts of additional rent provided for herein are not paid within (10) days after such installments shall be due, Lessee agrees to [illegible] Lessor's option, in addition to any and all other remedies provided in this Lease or available at law or in equity, as and for Lessor's costs of collection, interest at the rate of 15% per annum on all sums not paid wi[illegible] cise by Lessor of the rights granted to it under this Section 15 shall not be deemed a waiver of any of the rights and/or remedies otherwise granted to it under this Lease, including, without limitation, the rig[illegible] order Section 17 hereof, to declare the Lessee in default.

ASSIGNMENT; SUBLEASE.

16.1 BY LESSEE. Lessee shall not assign, transfer, pledge or otherwise dispose of this Lease or its interest hereunder nor enter into any sublease, lend any of the Equipment, or permit it to be used by anyone oth[illegible] its authorized employees [illegible]

16.2 BY LESSOR. Lessee acknowledges notice of Lessor's intention to assign Lessor's interest in this Lease, and Lessee agrees that Lessor may assign this Lease and/or mortgage the Equipment, in whole or in pa[illegible] to Lessee but upon receiving any notice thereof Lessee shall promptly acknowledge receipt thereof in writing. Each such assignee and/or mortgagee shall have all of the rights, but none of the obligations of Lessor un[illegible]ept the obligation to continue to keep the Equipment subject to this Lease in accordance with the terms and conditions hereof. Lessee agrees that it shall not assert against any assignee or mortgagee of Lessor [illegible], recoupment, claim or counterclaim that Lessee may have against Lessor and Lessee shall remain liable for its obligations hereunder in spite of any such assignment or mortgage. Lessor's assignee or mortgagee o[illegible] the Lease or mortgage, as the case may be, under the same terms and conditions. Upon any assignment or re-assignment of this Lease by Lessor or Lessor's successors in interest, as the case may be, Lessee shall, at [illegible] or any of its successors in interest, as the case may be, execute acknowledge and deliver a statement in writing certifying that this Lease is unmodified and in full force and effect (or if there have been modifi[illegible] same is in full force and effect as modified and stating the modifications), and the dates to which the rents and other charges have been paid in advance, and if there are any defaults claimed by Lessee. Such statem[illegible]ain an agreement by Lessee to make all future payments of rents and other charges under the Lease directly to Lessor or Lessor's successor in interest, as the case may be.

DEFAULT. If Lessee shall default in the payment of any sums to be paid hereunder and such default shall continue for more than ten (10) days after Lessor has given notice thereof (except that Lessee sh[illegible] to notice of default in the case of non-payment or late payment of rent), or if Lessee has breached any other provision of this Lease, or if a petition in bankruptcy or for reorganization or for the appointment of [illegible]ustee of any part of the property of Lessee; or any other proceedings for the relief of debtors shall be filed by or against Lessee or if Lessee shall make a general assignment for the benefit of creditors, or susp[illegible]mit any act amounting to business failure, or if an attachment shall be levied or a tax lien filed against any of Lessee's property, or if Lessee shall make a voluntary or involuntary assignment or transfer of all, [illegible]ll, of its property, or an unauthorized assignment of its interest hereunder, or if Lessee, in Lessor's sole opinion, shall undergo any material change as to increase Lessor's risk, including any materially assets[illegible] the terms of this Lease, then in any of such events, Lessor, at its option, may declare the Lessee to be in default, in which case Lessor shall have the right to exercise any one or more of the following remedies [illegible]

Lessor may recover from Lessee as immediately due and payable the entire amount of unpaid rentals for the balance of the term of this Lease, together with any and all other charges which may be then or which becom[illegible]e, including without limitation, costs of collection and attorneys' fees (not to exceed 20% of the amount collected);

Lessor may terminate this Lease and/or within thirty (30) days thereof, demand a return of the Equipment to the destination specified by Lessor, freight prepaid by Lessee;

Lessor, without demand, or notice to or consent of Lessee, and without any court order or other process of law, may take possession of any or all items of Equipment, wherever the Equipment may be located for th[illegible] upon any premises owned or leased by Lessee without liability for any damages occasioned by such taking possession. Lessor may thereafter hold the Equipment free and clear of this Lease and of any rights of Less[illegible] return or retaking of the Equipment shall not constitute termination of this Lease. Lessor may sell all or any part of the Equipment free and clear of any claims of Lessee at private sale or sales, upon ten (10) da[illegible]otice to Lessee, at such price or prices and upon such terms as Lessor may elect, or at public sale or sales at which Lessor may bid for and purchase any or all of the Equipment. Lessor shall also have the right [illegible]ng of the Equipment free and clear of any claims of Lessee, upon ten (10) days prior written notice to Lessee, at such rental or rentals and upon such terms and conditions as Lessor may elect. Lessee agrees that pr[illegible]ers and lessees of the Equipment shall have the right to enter upon Lessee's premises to inspect such Equipment and that Lessor may conduct its [illegible] and/or leasing transactions on Lessee's premises. The net proceed[illegible]

...e or sales and/or the net rentals received under any new leasings, less 5% of the total cost of the Equipment as the case may be, shall be ... (i) first to the payment of all costs and expenses of every ki... incurred in connection with or incidental to the foregoing, preparing for sale or lease and the selling or leasing of the Equipment, including attorney's ... not to exceed 20% of the amount collected and then (ii) to t... for the entire term provided for herein and then remaining unpaid. The Lessee shall remain liable to the Lessor for the payment of any deficiencies, together with interest thereon computed at the rate of fifteen perce... thum. The surplus, if any, shall be liquidated damages for the breach of this agreement and shall be payable to Lessor.

Lessor may pursue any other remedy at law or in equity.

... to such item or items of Equipment with respect to which Lessor elects to terminate this Lease, this Lease shall continue in full force and effect and Lessee shall be bound to continue to pay and perform its obligatio... repossession or resale of any item of Equipment shall not bar an action for a deficiency as above provided, and the bringing of an action for the entry of judgment against the Lessee shall not bar the Lessor's right... of all items of Equipment.

... OPTION TO RENEW. Lessee shall have the option to renew this Lease with respect to the Equipment as an entirety for such additional term, if any, and for such rental as is specified on the front ... provided that such option shall be exercisable only upon Lessee's giving written notice to Lessor of Lessee's intent so to renew. Lessee's renewal notice shall be given during the third month preceding the expiration of t... of this Lease and shall be accompanied by Lessee's check in an amount equal to the aggregate rentals payable by Lessee during the first year of the renewal period.

... SURRENDER. At the expiration of this Lease or upon demand by Lessor made pursuant to paragraph (b) of Section 17 hereof, or upon the termination of this Lease in any manner whatever, Lessee sha... grant and ship the same to the destination specified by Lessor and by such carrier as Lessor shall designate. Lessee shall return the Equipment in good operating order and repair. Any and all transportation cos... returning of the Equipment as aforesaid shall be borne by the Lessee. Transportation costs shall be deemed to include insurance for the full replacement value of the Equipment without consideration for depreciatio...

... MISCELLANEOUS.

... REMEDIES CUMULATIVE. Lessor may pursue any remedy available to it at law or in equity. Each and every right and remedy hereby specifically given to Lessor may be exercised from time to time ... and as often and in such order as may be deemed expedient by Lessor. All such rights and remedies shall be cumulative and the exercise of one shall not be deemed a waiver of the right to exercise any other or other... wise by Lessor in the exercise of any such power or remedy and no renewal or extension of any payments due hereunder shall impair any such power or remedy or shall be construed to be a waiver of any default ... thereto.

... NON-CANCELLABILITY. The Lease hereunder shall continue in full force and effect and be non-cancellable, except in accordance with its terms for the rental term herein provided.

... LESSOR'S RIGHT TO CURE DEFAULTS. In the event of failure of Lessee to pay any costs, expenses, fees, charges or taxes (as provided in Section 14 above) or to procure or maintain insuran... (Section 10 above), or failure to pay or perform any other obligation hereunder, Lessor shall have the right, but shall not be obligated, upon ten (10) days prior notice to Lessee (except in Lessee's place and stead, at ... Lessee shall repay Lessor the cost thereof with the next payment of rent as additional rent together with interest (at the rate of 12% per annum) from the date of any such payment by Lessor. The exercise by Less... ...rred to it under this subsection shall not be deemed a waiver of any of the rights and/or remedies otherwise granted to it under this Lease, including, without limitation, the right, granted to ... under Section ... ...r the Lessee in default.

... ENTIRE AGREEMENT. This Lease, together with the schedule attached hereto, if any, constitutes the entire agreement between the parties hereto, and can only be modified by further agreement ... ...by both such parties. No representations, warranties or agreements, oral or written, expressed or implied have been made by either party hereto with respect to the Lease hereunder or to the Equipment covered hereb... ...ecially provided herein.

... COOPERATION. Lessee shall provide Lessor with such corporate resolutions, opinions of counsel, certificates and other documents as Lessor may reasonably request from time to time. Lessee shall execute ... ...acknowledgements, including without limitation, financing and continuation statements under the Uniform Commercial Code as Lessor shall require for filing or recording this Lease or for effecting a disclaimer ... ...the Secretary of State of the state of incorporation or residence of Lessee, the Secretary of State of the state in which Lessee's principal office is located (if different from the state of incorporation or ... ...the County Clerk of the county in which the Equipment leased hereunder is located and used and such other places as Lessor shall deem necessary or desirable. Lessor is hereby authorized to ... ...nature of Lessee or any of its subsidiaries. Whenever requested by its assignee, or a third party, Lessor will join with Lessee in executing financing statements pursuant to the Uniform Commercial ...

... AGREEMENT AS LEASE; VENUE; SERVICE OF PROCESS. IT IS HEREBY STIPULATED BY AND BETWEEN LESSOR AND LESSEE THAT THIS AGREEMENT ... BE DEEM... ...IT IS FURTHER STIPULATED THAT SUCH LEASE WAS MADE IN NEW YORK COUNTY, NEW YORK, REGARDLESS OF THE ORDER IN WHICH THE SIGNATURES OF THE PART... ...AND THAT THIS LEASE SHALL BE INTERPRETED AND THE RIGHTS AND LIABILITIES OF THE PARTIES DETERMINED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK. AT THE TIME OF THE EXECUTION OF THIS LEASE, LESSEE HEREBY AGREES THAT ALL ACTIONS OR PROCEEDINGS ARISING, DIRECTLY OR INDIRECTLY, FROM THIS LEASE SHALL BE LITIGATED ONLY IN COURTS ... ...STATE OF NEW YORK AND LESSEE HEREBY CONSENTS TO THE JURISDICTION OF ANY COURT LOCATED WITHIN THE STATE OF NEW YORK, AND WAIVES PERSONAL SERVICE OF ANY ... ...HEREIN, CONSENTS THAT ALL SUCH SERVICE OF PROCESS MAY BE MADE BY CERTIFIED OR REGISTERED MAIL, RETURN RECEIPT REQUESTED, DIRECTED TO LESSEE AT THE ... ...SERVICE SO MADE SHALL BE COMPLETE FIVE (5) DAYS AFTER THE SAME HAS BEEN POSTED AS AFORESAID.

... TAX TREATMENT. No representation is, or has been, made as to the treatment for income tax purposes of payments hereunder, it being understood that whether a particular ar... ...purposes as a Lease depends upon the facts and circumstances in each case.

... COUNTERPARTS AND RECORDING. This Lease may be executed in any number of required counterparts, each counterpart constituting an original. The parties ... ...or cooperation of this agreement as may be required at any time in order to comply with the provisions of any applicable law requiring the recording or filing of this agreement or a ... ...form, any ... or any political or governmental subdivision of any state. Lessee agrees to pay the fees and charges imposed by law for such necessary recording or filing and the ... ...of such recording or filing.

... FAILURE TO SURRENDER AS EXTENSION. If, upon the expiration of the full term of this Lease as above provided for, Lessee does not immediately return the Equipment to Lessor a... ...request its return, then the Equipment shall continue to be held and leased under and in accordance with the conditions in this agreement contained, and this agreement shall thereupon be extended automatically to be ... ...for the Lessee or Lessor with a thirty (30) days notice in writing to the other may terminate it, whereupon Lessee shall forthwith deliver the Equipment to Lessor.

... HEADINGS. The section headings contained herein have been inserted as a matter of convenience only and shall not be deemed to affect the interpretation of the Lea...

... SEVERABILITY. If a provision hereof or any remedy herein provided for shall be invalid under any applicable law, such provision shall be inapplicable and deemed omitted, but the same shall not affe... ...provisions hereof which shall be construed to effect the manifest intent thereof.

... NOTICE. Any notice or other communication, including rent payments, authorized or required by this Lease shall be made to the parties hereto in writing at the addresses shown set forth on the f... ...other address as either party may designate to the other by notice similarly served, by personal delivery or by first class mail, postage prepaid. All notices and other communications (other than rent ... ...ten (10) days after the date of mailing.

... INTEREST. In the event that the rate of interest at any time payable hereunder by either party to the other shall exceed the legal amount so payable, then the interest to be paid shall be ... ...at all times to legally permissible.

... ACCEPTANCE BY LESSOR. Neither this Lease nor any modification hereto, oral or written, shall be deemed binding upon Lessor unless executed by Lessor's Executive Vice P... ...Director or other agent of Lessor shall be deemed to have the authority to bind Lessor in any respect.

RIDER ATTACHED TO SUBLEASE AGREEMENT
NO. 057/82/000 126/0 DATED [illegible] BETWEEN
[illegible] AND
[illegible]

The printed part of this Sublease is hereby amended, modified and supplemented as follows: To the extent that the printed part of the Sublease and this Rider are compatible, each shall be deemed in addition to and in expansion of, the other. Wherever there is any conflict between this Rider and the printed part of this Sublease, the provisions of this Rider are paramount and the Sublease shall be construed accordingly.

1. For purposes of this Sublease only, and without in any way changing any of the terms, provisions, conditions and covenants in the printed part of this Sublease or this Rider, all references in the printed part of this Sublease to "Lessor" shall mean "Sublessor", all references to "Lease" shall mean "Sublease" and all references to "Lessee" shall mean "Sublessee".

2. This Sublease, and the rights of Sublessor and Sublessee hereunder, shall be subordinate in all respects to an Agreement of Lease No. 057/82/000 126/0 (the "Prime Lease") between Locafrance U. S. Corporation, with a place of business at 919 Third Avenue, New York, New York ("Locafrance" as lessor, and Sublessor as lessee, and to the rights of Locafrance thereunder.

3. Sublessee hereby acknowledges Sublessor's right to assign its interests under this Sublease to Locafrance, and that it shall do so and consents to such assignment, and in consideration of this Sublease, the Sublessee agrees that its obligation to pay directly to Locafrance the amounts (whether designated as rentals or otherwise) which become due as set forth in the Sublease shall be absolutely unconditional, and it promises so to pay the same to Locafrance at its

address hereinbefore stated, notwithstanding any defense, set-off or counterclaim whatsoever, whether by reason of breach of the Sublease or otherwise, which it may or might now or hereafter have as against the Sublessor (the Sublessee reserving its right to have recourse directly against the Sublessor on account of any such defense, set-off or counterclaim).

4. Sublessor and Sublessee each recognize and agree that Locafrance is the owner of the Equipment and the Equipmart shall at all times remain the property of Locafrance, and that neither Sublessor or Sublessee has any right, title, interest or equity in the Equipment whatsoever except as may be set forth in the Prime Lease and Sublease. Sublessee shall at all times protect and defend, at its own cost and expense, the title of Locafrance from and against all claims, liens and legal process of creditors of Sublessee and Sublessor, and keep all the Equipment free and clear from all such claims, liens and pr[illegible]. The Equipment is, and shall at all times remain, personal property irr[illegible]ective of the way it may be affixed to the realty, and Sublessee shall maintai[illegible] each item of Equipment so that it may be removed from any building in which it is [illegible] without damaging such building. Sublessee will so notify any landlord [illegible] mortgagee of the premises in which the Equipment is kept and will obtain the agreement thereto by all such landlords and mortgagees. If at any time during the term hereof Locafrance supplies Sublessee with labels, plates or other markings, stating that the Equipment is owned by Locafrance, Sublessee shall affix and keep the same upon a prominent place on each and every item comprising the Equipment.

5. Any default by Sublessor under the Prime Lease shall be construed to be a default by Sublessee under this Sublease thereby entitling Locafrance to exercise and to avail itself of all of its rights and remedies under the Prime Lease; provided, however, if Sublessee is not then in default under this Sublease, Sublessee may, if Locafrance consents in writing, continue to have the quiet use and enjoyment of the Equipment on such terms and conditions, including the payment of rentals, as may be satisfactory to Locafrance.

6. Notwithstanding the sublease of the Equipment under this Sublease, it is understood and agreed that Sublessor shall be and remain primarily and not secondarily liable to Locafrance for the full and prompt payment and performance by Sublessor of all of its obligations, accrued and executory, under the Prime Lease.

INTERMODAL SYSTEMS LEASING, INC.

By _____

Sublessee: KAC-DUS WAREHOUSE

By James W Baker

Optional Purchase Option Provision

Provided that all lease rental payments and all other payments required to be made under the Sublease have been made by Sublessee, and Sublessee has not been and is not then, in default under the terms of the Sublease, or if Sublessee has been, or is, in default under the terms of this Sublease such default has been cured, or waived by Sublessor and Locafrance, at the expiration of the base term of this Sublease, Sublessee shall have the option to purchase all of Sublessor's right, title and interest in the Equipment at a purchase price equal to the then fair market value of the Equipment determined by an independant appraiser selected by Locafrance. The cost of such appraisal shall be borne by Sublessee. Th...

shall be exercised by Sublessee giving written notice to Loadrance and to Sublessor that it is exercising the option granted herein, which notice shall include the date this Sublease expires. On such date the option price shall be due and payable by Sublessee to Sublessor, upon receipt of which Sublessor shall deliver to Sublessee a Bill of Sale transferring all of Sublessor's right, title and interest in the Equipment to Sublessee.

C 104 - Summons without Notice, Blank Court. 8-70
Personal Service.

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80 EXCHANGE PLACE AT BROADWAY, NEW

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

LOCAFRANCE U.S. CORPORATION,

Plaintiff

against

OAK DISTRIBUTION CO., INC., and
SERVICE CENTER OF OKLAHOMA,

Defendant

Index No.

Plaintiff designates
New York
County as the place of trial

The basis of the venue is
THE CAUSE OF ACTION ARI
NEW YORK COUNTY

Summons

Plaintiff resides at
20 Woodsbridge Road
Katonah, New York
County of

To the above named Defendant OAK DISTRIBUTION CO., INC. and SERVICE CENTER OF OKLA

You are hereby summoned to answer the complaint in this action and to a copy of your answer, or, if the complaint is not served with this summons, to serve a noti appearance, on the Plaintiff's Attorney(s) within 20 days after the service of this summons, exc of the day of service (or within 30 days after the service is complete if this summons is not perso delivered to you within the State of New York); and in case of your failure to appear or answer, ment will be taken against you by default for the relief demanded in the complaint.

Dated, October 23, 1975

REGAN COLLEARD HELLER WEITZER &

Attorney(s) for Plaintiff

Defendant's Address:
601 No Miller
Oklahoma City, Oklahoma

Office and Post Office Address

445 Park Avenue
New York, New York 10022

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

LOCAFRANCE U.S. CORPORATION,

Plaintiff,

-against-

OAK DISTRIBUTION CO., INC., and SERVICE CENTER OF OKLAHOMA,

Defendants.

COMPLAINT

Plaintiff, by its attorneys, REGAN GOLDFARB HELLER WETZLER & QUINN, complaining of Defendants alleges as follows:

1. Plaintiff is a Corporation organized and existing under and by virtue of the laws of the State of Delaware having at all relevant times herein maintained its principal place of business at 919 Third Avenue, in the City, County and State of New York and now maintaining an office at 20 Woodsbridge Road, Katonah, New York.

2. Upon information and belief, Defendant OAK DISTRIBUTION CO., INC. ("OAK") is a corporation organized and existing under and by virtue of the laws of the State of Oklahoma with offices at 601 N. Miller, Oklahoma City, Oklahoma.

3. Upon information and belief Defendant SERVICE CENTER OF OKLAHOMA ("SERVICE") is a Corporation organized and

existing under and by virtue of the laws of the State of Oklahoma with offices at 601 N. Miller, Oklahoma City, Oklahoma and is the successor in interest t OAK.

4. On or about August 15, 1974, Plaintiff and OAK entered into a written agreement (a copy of which is annex hereto as Exhibit "A") whereby Plaintiff leased to OAK the equipment described in the said written agreement.

5. Pursuant to the aforesaid written agreement OAK obligated itself to pay to Plaintiff monthly payments of $669.50 for a period of thirty-six (36) months, commencing on or about August 15, 1974.

6. Although Plaintiff has in all respects performed its obligations under the said written agreement OAK has failed and refused to pay Plaintiff the monthly rental payments due and owing under the said written agreement since in or about March, 1975 thereby placing OAK in default under Section "17" thereof.

7. OAK and SERVICE have been advised of, but have not cured, the aforesaid defaults and continue to refuse to make the aforesaid monthly rental payments.

8. By reason of the foregoing, there is now due and owing to the Plaintiff from Defendants the sum of $19,415.50.

WHEREFORE, Plaintiff demands judgment against

Defendants in the sum of $19,415.50 together with interest thereon from March 19, 1975, the costs and disbursements of this action and for such other and further relief as the Court may deem just and proper.

Dated: New York, New York
October , 1975

Yours, etc.

REGAN GOLDFARB HELLER WETZLER
& QUINN
ATTORNEYS FOR PLAINTIFF
445 Park Avenue
New York, New York 10022
(212) 754-3000

Sub [illegible] 0574224009 126/ .. Commitment [illegible]

NAME AND ADDRESS OF LESSOR:
[illegible] Leasing, Inc.
[illegible] 39th Street
York, N.Y. 10001
[illegible] State of Delaware

NAME AND ADDRESS OF SUBLESSEE:
O.K. Distribution Co., Inc.
601 N. Miller
Oklahoma City, Oklahoma 73107
Incorporated in State of: Oklahoma

DESCRIPTION	
Hyster Forklift	C2D57491
" "	A10D31602
Yale "	A1128157
" "	AH112503

LOCATION OF EQUIPMENT: STREET: 601 North Miller; CITY: Oklahoma City; COUNTY: Oklahoma; STATE: Oklahoma

RENTAL COMMENCEMENT DATE: August 15, 1974

LEASE TERM OF LEASE:	PERIOD	NUMBER OF RENTALS	AMOUNT OF EACH RENTAL	SALES TAXES	TOTAL	AMOUNT OF SECURITY DEPOSIT
months	36 months	36	$650.00	$19.50	$669.50	$ —
RENTALS PAYABLE MONTHLY ☒ QUARTERLY ☐						ADVANCE RENTAL(S) $ 669.50 REPRESENTING PAYMENT FOR THE 1st RENTAL
Renewal Rental Payable Annually In Advance						PAYABLE AT THE SIGNING OF THIS LEASE

Section 1. LEASE. Lessor hereby leases to Lessee, and Lessee hereby rents from Lessor, subject to the terms, conditions and rents hereinafter set forth, the personal property listed above, or separately scheduled, in the schedule attached hereto, made a part hereof and marked Schedule "A" together with all replacement parts, additions, repairs and accessories incorporated and/or affixed thereto (the "Equipment"). It is understood that this Lease shall be effective and binding upon Lessor only when executed by Lessor ("Commitment Date") and that the term of this lease shall commence upon [illegible] (the "Rental Commencement Date").

Section 2. SELECTION AND ORDERING OF EQUIPMENT. Lessee has requested equipment of the type and quantity specified above or [illegible] Schedule A attached [illegible] and no representation as to Equipment or any other matter [illegible] shall in any way affect Lessee's duty to pay the rent and perform its other obligations as set forth in this Lease.

Section 3. NO WARRANTIES BY LESSOR. Lessee acknowledges that Lessor, Lessor's successor, or Lessor's assignee is not the manufacturer of the Equipment, the agent of the manufacturer nor the distributor thereof and that Lessee has selected [illegible] the Equipment leased hereunder prior to having requested the Lessor to purchase it for leasing to the Lessee [illegible] LESSEE ALSO ACKNOWLEDGES THAT LESSOR HAS MADE AND MAKES NO WARRANTIES OR REPRESENTATIONS OF WHATSOEVER NATURE DIRECT OR INDIRECT, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, AS TO THE SUITABILITY, DURABILITY, FITNESS FOR USE, MERCHANTABILITY, DESIGN OR CONDITION OF, OR AS TO THE QUALITY OR CAPACITY OF THE MATERIAL, OR WORKMANSHIP, OR MARKETABILITY, QUALITY OR OTHERWISE OF THE EQUIPMENT, OR OF THE ABILITY OF THE SUPPLIER TO PERFORM, OR THAT THE EQUIPMENT WILL SATISFY THE REQUIREMENTS OF ANY LAW, RULE, SPECIFICATION OR CONTRACT WHICH PROVIDES FOR SPECIFIC MACHINERY OR OPERATORS OR SPECIAL METHODS. IT BEING AGREED THAT ALL SUCH RISKS, AS BETWEEN LESSOR AND LESSEE, ARE TO BE BORNE BY LESSEE AT ITS SOLE RISK AND EXPENSE. Lessee specifically waives all rights of any kind to make a claim against the Lessor, Lessor's successor or Lessor's assignee herein for breach of any warranty of any kind whatsoever.

3.1 ASSUMPTION OF ALL RISK BY LESSEE. Inasmuch as Lessee has selected [illegible] the Equipment [illegible] and has agreed to assume all risk of loss resulting from [illegible] any reason whatsoever (including force majeure), it is understood and agreed that Lessee irrevocably waives any claim against Lessor for any loss or damage resulting from any cause, circumstance or event of whatsoever nature including but not limited to, failure of or delay in delivery, delivery to the wrong place, delivery of improper Equipment, damage to the Equipment, defect or unfitness of the Equipment or the installation of the same, governmental regulation, Act of God, strike, embargo or any other cause, circumstances, whether of like or unlike nature and, in connection therewith, Lessee agrees that any of the same shall not relieve Lessee of the obligations to pay rent or of any other obligation under this Lease. Lessor, Lessor's successor or Lessor's assignee, shall have no obligation to install, erect, test, adjust or service the Equipment. Lessee shall, at its own cost and expense; (a) pay all charges and expenses in connection with the operation of all Equipment (b); comply with all laws, ordinances, regulations, requirements and rules with respect to the use, maintenance and operation of the Equipment; (c) make all repairs and replacements required to be made to maintain the Equipment in good condition, reasonable wear and tear excepted.

...all the Equipment, Lessee agrees to take any and all such action, including without limiting the generality of the foregoing, alterations or modifications, structural or otherwise, to the ...ises in which the Equipment shall be located. Lessee shall inspect the Equipment within eight (8) business days after its arrival at the address set forth above, and if in good ...order and repair ...accept the Equipment by executing and delivering to Lessor a dated notice of receipt in the form annexed hereto and labeled "Delivery Acceptance Receipt". Lessee hereby authorizes Lessor to ...to this Lease the serial numbers and other identification data of each item of Equipment as delivered. If, Lessee shall determine that the Equipment is not in good working order and repair it ...within such eight day period, send to Lessor a written notice specifying the defect or other objection to the Equipment and stating that it is rejecting the Equipment. In the event that Lessee gives ...rejection notice referred to in the immediately preceding sentence, Lessee shall, on demand by Lessor, pay Lessor any amount theretofore paid by Lessor in respect of the purchase of such ...ipment. In the event that Lessor has previously paid an amount in respect of the purchase of such Equipment, then the amount to be paid to Lessor shall include interest computed at the rate of ...per annum from the date of payment of such amount by Lessor to the date of payment by Lessee. Upon such payment Lessee shall be subrogated to Lessor's claim, if any, against the manufacturer ...other supplier of the Equipment, provided that Lessee shall indemnify and save Lessor, Lessor's successor or Lessor's assignee, harmless from any and all loss, damage, cost, expense, including attorney's ...and liability to the manufacturer or other supplier of the Equipment resulting directly or in any way indirectly from the wrongful rejection of the Equipment or from failure to comply with the duties ...ied upon a merchant buyer by the Uniform Commercial Code, including without limitation, Section 2-602 thereof. However, if within such eight day period Lessee shall not have executed and delivered ...Lessor a Delivery Acceptance Receipt nor shall have given written notice to Lessor rejecting the Equipment, Lessee agrees that it shall be conclusively presumed, as between Lessor and Lessee, that ...Lessee has fully inspected the Equipment, that the Equipment is in full compliance with the terms of this Lease and in good condition and repair, and that Lessee is satisfied with and has accepted the ...Equipment. If, for any reason whatsoever, the Equipment shall not have been delivered to Lessee at the address set forth above and accepted by Lessee in accordance with this Section 4 by the Sixth day ...after the Requested Date of Delivery then Lessor shall have the option to cancel this Lease. If Lessor shall cancel this Lease, Lessee shall, on demand by Lessor, pay Lessor any amount theretofore paid ...or owing by Lessor in respect of the purchase of such Equipment. In the event that Lessor has previously paid an amount in respect of the purchase of such equipment, then the amount to be paid to ...Lessor shall include interest computed at the rate of ...% per annum from the date of payment of such amount by Lessor to the date of payment by Lessee. Upon such payment Lessee shall be subro-...gated to Lessor's claim, if any, against the manufacturer or other supplier of the Equipment, provided that Lessee shall indemnify and save Lessor, Lessor's successor or Lessor's assignee, harmless from ...any and all loss, damage, cost, expense, including attorney's fees, and liability to the manufacturer or other supplier of the Equipment.

Section 5 CLAIMS AGAINST SUPPLIER. Lessor agrees to use its best efforts to obtain Supplier's agreement that all representations, warranties and covenants, if any, made by ...Supplier to Lessor or Lessee may be enforced by Lessor and/or Lessee jointly and severally; provided, however, that Lessee agrees that it shall make no claim against Supplier except upon three days ...prior notice to Lessor and provided, further, that Lessee shall not be permitted to exercise such right in the event that it shall be in breach of any of the terms, provisions or conditions of this ...Lease.

...E ADDITIONAL PROVISIONS ON THE REVERSE SIDE HEREOF ARE INCLUDED IN, AND MADE A PART OF, THIS LEASE. THIS ...A NON-CANCELLABLE LEASE FOR THE TERM INDICATED ABOVE.

...Rider(s) No. I

NAME OF ~~LESSEE~~ SUBLESSEE: OAK DISTRIBUTION CO., INC.

...TERMINAL SYSTEMS LEASING

...Dated ...., 19..

...Executive Vice President or Secretary, Treasurer

X Leonard Fruitmore Pres. ...
Authorized Signature Title

X _____
Authorized Signature Title

X _____
Authorized Signature Title

...CORPORATE SEAL

Corporate Seal

RIDER NUMBER 1 TO SUBLEASE AGREEMENT NO. 057/82/000 126/0 BETWEEN INTERMODAL SYSTEMS LEASING, INC., SUBLESSOR AND OAKLEY DISTRIBUTION CO., INC., SUBLESSEE

The printed part of this Sublease is hereby amended, modified and supplemented as follows: To the extent that the printed part of the Sublease and this Rider are compatible, each shall be deemed in addition to and in expansion of, the other. Wherever there is any conflict between this Rider and the printed part of this Sublease, the provisions of this Rider are paramount and the Sublease shall be construed accordingly.

1. For purposes of this Sublease only, and without in any way changing any of the terms, provisions, conditions and covenants in the printed part of this Sublease or this Rider, all references in the printed part of this Sublease to "Lessor" shall mean "Sublessor", all references to "Lease" shall mean "Sublease" and all references to "Lessee" shall mean "Sublessee".

2. This Sublease, and the rights of Sublessor and Sublessee hereunder, shall be subordinate in all respects to an Agreement of Lease No. 057/82/000 126/0 (the "Prime Lease") between Locafrance U. S. Corporation, with a place of business at 919 Third Avenue, New York, New York ("Locafrance") as lessor, and Sublessor as lessee, and to the rights of Locafrance thereunder.

3. Sublessee hereby acknowledges Sublessor's right to assign its interests under this Sublease to Locafrance, and that it shall do so and consents to such assignment, and in consideration of this Sublease, the Sublessee agrees that its obligation to pay directly to Locafrance the amounts (whether designated as rentals or otherwise) which become due as set forth in the Sublease shall be absolutely unconditional, and it promises so to pay the same to Locafrance at its address hereinbefore stated, notwithstanding any defense, set-off or counterclaim whatsoever, whether by reason of breach of the Sublease or otherwise, which it may or might now or hereafter have as against the Sublessor (the Sublessee reserving its right to have recourse directly against the Sublessor on account of any such defense, set-off or counterclaim).

4. Sublessor and Sublessee each recognize and agree that Locafrance is the owner of the Equipment and the Equipmert shall at all times remain the property of Locafrance, and that neither Sublessor or Sublessee has any right, title, interest or equity in the Equipment whatsoever except as may be set forth in the Prime Lease and Sublease. Sublessee shall at all times protect and defend, at its own cost and expense, the title of Locafrance from and against all claims, liens and legal process of creditors of Sublessee and Sublessor, and keep all the Equipment free and clear from all such claims, liens and process. The Equipment is, and shall at all times remain, personal property irrespective of the way it may be affixed to the realty, and Sublessee shall maintain each piece of Equipment so that it may be removed from any building in which it is placed without damaging such building. Sublessee will so notify any landlord or mortgagee of the premises in which the Equipment is kept and will obtain the agreement thereto by all such landlords and mortgagees. If at any time during the term hereof Locafrance supplies Sublessee with labels, plates or other markings, stating that the Equipment is owned by Locafrance, Sublessee shall affix and keep the same upon a prominent place on each and every item comprising the Equipment.

5. Any default by Sublessor under the Prime Lease shall be construed to be a default by Sublessee under this Sublease thereby entitling Locafrance to exercise and to avail itself of all of its rights and remedies under the Prime Lease; provided, however, if Sublessee is not then in default under this Sublease, Sublessee may, if Locafrance consents in writing, continue to have the quiet use and enjoyment of the Equipment on such terms and conditions, including the payment of rentals, as may be satisfactory to Locafrance.

6. Notwithstanding the sublease of the Equipment under this Sublease, it is understood and agreed that Sublessor shall be and remain primarily and not secondarily liable to Locafrance for the full and prompt payment and performance by Sublessor of all of its obligations, accrued and executory, under the Prime Lease.

INTERMODAL SYSTEMS LEASING, INC.

By _____

Sublessee: OAK DISTRIBUTION CO., INC.

By Leonard L. Fenimore

Optional Purchase Option Provision

Provided that all lease rental payments and all other payments required to be made under the Sublease have been made by Sublessee, and Sublessee has not been and is not then, in default under the terms of the Sublease, or if Sublessee has been, or is, in default under the terms of this Sublease such default has been cured, or waived by Sublessor and Locafrance, at the expiration of the base term of this Sublease, Sublessee shall have the option to purchase all of Sublessor's right, title and interest in the Equipment at a purchase price equal to the then fair market value of the Equipment determined by an independent appraiser selected by Locafrance. The cost of such appraisal shall be borne by Sublessee. The option shall be exercised by Sublessee giving written notice to Locafrance and to Sublessor that it is exercising the option granted herein, which notice shall include the date this Sublease expires. On such date the option price shall be due and payable by Sublessee to Sublessor, upon receipt of which Sublessor shall deliver to Sublessee a Bill of Sale transferring all of Sublessor's right, title and interest in the Equipment to Sublessee.

L.L.F.

C 104 Summons without Notice, Blank Court. 9-70 Personal Service.

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

LOCAFRANCE U.S. CORPORATION,

Plaintiff

against

INTERSTATE DISTRIBUTION SERVICES, INC.,

Defendant

Index No.

Plaintiff designates New York *County as the place of trial*

The basis of the venue is CAUSE OF ACTION AROSE IN NEW YORK COUNTY

Summons

Plaintiff resides at 20 Woodsbridge Road Katonah, New York *County of*

To the above named Defendant INTERSTATE DISTRIBUTION SERVICES, INC.

You are hereby summoned *to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance, on the Plaintiff's Attorney(s) within 20 days after the service of this summons, exclusive of the day of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.*

Dated, October 24, 1975

Defendant's Address:
3023 Kemper Road
Cincinnati, Ohio

REGAN GOLDFARB HELLER WETZLER & QUINN
Attorney(s) for Plaintiff

Office and Post Office Address
445 Park Avenue
New York, New York 10022

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

----------X

LOCAFRANCE U.S. CORPORATION, :

Plaintiff, :

-against- :

INTERSTATE DISTRIBUTION SERVICES, INC., :

Defendant. :

----------X

COMPLAINT

Index No.

Plaintiff, by its attorneys, REGAN GOLDFARB HELLER WETZLER & QUINN, complaining of Defendant, alleges as follows:

1. Plaintiff is a Corporation organized and existing under and by virtue of the laws of the State of Delaware having at all relevant times herein maintained its principal place of business at 919 Third Avenue, in the City, County and State of New York and now maintaining an office at 20 Woodsbridge Road, Katonah, New York.

2. Upon information and belief, Defendant INTERSTATE DISTRIBUTION SERVICES, INC. ("Defendant") is a Corporation organized and existing under and by virtue of the laws of the State of Ohio with offices at 3023 Kemper Road, Cincinnati, Ohio.

3. On or about August 15, 1974, Plaintiff and Defendant entered into a written agreement (a copy of which is annexed hereto as Exhibit "A") whereby Plaintiff leased to Defendant the equipment described in the said written agreement.

4. Pursuant to the aforesaid written agreement Defendand obligated itself to pay to Plaintiff monthly payments of $595.65 for a period of thirty-six (36) months, commencing on or about August 15, 1975.

5. Although Plaintiff has in all respects performed its obligations under the said written agreement, Defendant has failed and refused to pay Plaintiff the monthly rental payments due and owing under the said written agreement since in or about July, 1975 thereby placing Defendant in default under Section "17" thereof.

6. Defendant has been advised of, but has not cured, the aforesaid defaults and continues to refuse to make the aforesaid monthly rental payments.

7. By reason of the foregoing, there is now due and owing to the Plaintiff from Defendant the sum of $15,486.90.

WHEREFORE, Plaintiff demands judgment against Defendant in the sum of $15,486.90 together with interest thereon from July 15, 1975, the costs and disbursements of this action and for such other and further relief as the Court may deem just and proper.

Dated: New York, New York
October 24, 1975

Yours, etc.

REGAN GOLDFARB HELLER WETZLER
& QUINN
ATTORNEYS FOR PLAINTIFF
445 Park Avenue
New York, New York 10022
(212) 754-3000

SUB[illegible] Case No. 057/E2/002.126/3 Commitment Date [illegible]

NAME AND ADDRESS OF [illegible]SSOR:
[illegible]ntermodal Systems Leasing, Inc.
[illegible]0 West 34th Street
[illegible]ew York, New York 10001
[illegible]ncorporated in State of Delaware

NAME AND ADDRESS OF [illegible] SUBLESSEE:
Interstate Distribution Services, Inc.
3023 Kemper Road
Cincinnati, Ohio 45241
Incorporated in State of: Ohio

	DESCRIPTION	Model No.	Serial No.
[illegible]	Hyster Forklift	C2D	9674P
		C2D	10184P

[illegible]OCATION OF [illegible]QUIPMENT:	STREET:	3023 Kemper Road
	CITY:	Cincinnati
	COUNTY:	Hamilton
	STATE:	Ohio

[illegible] RENTAL COMMENCEMENT DATE:

BASIC TERM OF LEASE:	PERIOD	NUMBER OF RENTALS	AMOUNT OF EACH RENTAL	SALES TAXES	TOTAL	AMOUNT OF SECURITY DEPOSIT
[illegible]6 Months	36 Months	36	$570.00	$25.65	$595.65	$--
[illegible]ENTALS PAYABLE MONTHLY ☒ QUARTERLY ☐						ADVANCE RENTAL(S) $595.65 REPRESENTING PAYMENT FOR THE 1st RENTAL [illegible]
Renewal Rental Payable Annually In Advance						PAYABLE AT THE SIGNING OF THIS LEASE

Section 1. **LEASE.** Lessor hereby leases to Lessee, and Lessee hereby rents from Lessor, subject to the terms, conditions and rents hereinafter set forth, the personal property listed above, or [illegible]eparately scheduled, in the schedule attached hereto, made a part hereof and marked Schedule "A" together with all replacement parts, additions, repairs and accessories incorporated and/or affixed [illegible]reto (the "Equipment"). It is understood that this Lease shall be effective and binding upon Lessor only when executed by Lessor ("Commitment Date") and that the term of this lease shall [illegible]mence upon ~~delivery of new Equipment and acceptance thereof by Lessee in accordance with the provisions of Section 4 of this Lease~~ (the "Rental Commencement Date").

Section 2. **SELECTION AND ORDERING OF EQUIPMENT.** Lessee has requested equipment of the type and quantity specified above or in the Schedule A attached [illegible]reto ~~and has selected the Supplier named above~~. Lessor agrees to order the Equipment from the Supplier, on the terms and conditions of the purchase order initially attached hereto ~~and incorporated herein by reference~~. Lessee's performance of its obligations hereunder shall not be excused by reason of any dispute or claim as to the quality or nature of the Equipment or any delay in delivery or failure to deliver the Equipment by the Supplier, or any other ~~breach of the purchase order by the Supplier~~. Lessee shall not assert any claim it may have against the Supplier as a defense, counterclaim or set-off in any action brought by Lessor. Lessee acknowledges that neither the Supplier nor any other ~~agent of the Supplier~~ is authorized to act for Lessor, and that no ~~representation or warranty made by any such agent~~ shall be binding upon Lessor. Lessee's obligations hereunder shall be absolute and unconditional irrespective of any ~~breach~~ and no [illegible]epresentation as to Equipment or any other matter ~~whatsoever~~ shall in any way affect Lessee's duty to pay the rent and perform its other obligations as set forth in this Lease.

Section 3. **NO WARRANTIES BY LESSOR.** Lessee acknowledges that Lessor, Lessor's successor, or Lessor's assignee is not the manufacturer of the Equipment, the agent of the [illegible]nufacturer nor the distributor thereof and that Lessee has selected ~~by himself~~ the Equipment leased hereunder prior to having requested the Lessor to purchase it for leasing to the Lessee ~~and has had the Supplier, Lessee's own agent in fact, purchase the Equipment~~. LESSEE ALSO ACKNOWLEDGES THAT LESSOR HAS MADE AND MAKES NO WARRANTIES OR REPRESENTATIONS OF WHAT-[illegible]R NATURE DIRECT OR INDIRECT, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, AS TO THE SUITABILITY, DURABILITY, FITNESS FOR USE, MERCHANTABILITY, DESIGN [illegible]CONDITION OF, OR AS TO THE QUALITY OR CAPACITY OF THE MATERIAL, OR WORKMANSHIP, OR MARKETABILITY, QUALITY OR OTHERWISE OF THE EQUIPMENT, OR OF THE ABILITY [illegible]THE SUPPLIER TO PERFORM, OR THAT THE EQUIPMENT WILL SATISFY THE REQUIREMENTS OF ANY LAW, RULE, SPECIFICATION OR CONTRACT WHICH PROVIDES FOR SPECIFIC [illegible]CHINERY OR OPERATORS OR SPECIAL METHODS, IT BEING AGREED THAT ALL SUCH RISKS, AS BETWEEN LESSOR AND LESSEE, ARE TO BE BORNE BY LESSEE AT ITS SOLE RISK AND [illegible]PENSE. Lessee specifically waives all rights of any kind to make a claim against the Lessor, Lessor's successor or Lessor's assignee herein for breach of any warranty of any kind whatsoever.

3.1 **ASSUMPTION OF ALL RISK BY LESSEE.** Inasmuch as Lessee has selected ~~both~~ the Equipment ~~and Supplier~~ and has agreed to assume all risk of loss resulting from ~~the [illegible] of the Equipment or from its obligations for~~ any reason whatsoever (including force majeure), it is understood and agreed that Lessee irrevocably waives any claim against Lessor for any loss or [illegible]a, resulting from any cause, circumstance or event of whatsoever nature including but not limited to, failure of or delay in delivery, delivery to the wrong place, delivery of improper Equipment, [illegible]age to the Equipment, defect or unfitness of the Equipment or the installation of the same, governmental regulation, Act of God, strike, embargo or any other cause, circumstances, whether of like [illegible]unlike nature and, in connection therewith, Lessee agrees that any of the same shall not relieve Lessee of the obligations to pay rent or of any other obligation under this Lease. Lessor, Lessor's [illegible]essor or Lessor's assignee, shall have no obligation to install, erect, test, adjust or service the Equipment. Lessee shall, at its own cost and expense; (a) pay all charges and expenses in connection with [illegible]operation of all Equipment (b); comply with all laws, ordinances, regulations, requirements and rules with respect to the use, maintenance and operation of the Equipment; (c) make all repairs and [illegible]acements required to be made to maintain the Equipment in good condition, reasonable wear and tear excepted.

Section 4. DELIVERY; INSPECTION. In the event that any arrangements be performed by Lessee to enable the manufacturer or other supplier of the Equipment to deliver and install the Equipment, Lessee agrees to take any and all such action, including without limiting the generality of the foregoing, alterations or modifications, structural or otherwise, to the premises in which the Equipment shall be located. Lessee shall inspect the Equipment within eight (8) business days after its arrival at the address set forth above, and if in good working order and repair and accept the Equipment by executing and delivering to Lessor a dated notice of receipt in the form annexed hereto and labeled "Delivery Acceptance Receipt". Lessee hereby authorizes Lessor to add to this Lease the serial number and other identification data of each item of Equipment as delivered. If, Lessee shall determine that the Equipment is not in good working order and repair it shall, within such eight day period, send to Lessor a written notice specifying the defect or other objection to the Equipment and stating that it is rejecting the Equipment. In the event that Lessee gives such rejection notice referred to in the immediately preceding sentence, Lessee shall, on demand by Lessor, pay Lessor any amount theretofore paid or owing by Lessor in respect of the purchase of such Equipment. In the event that Lessor has previously paid an amount in respect of the purchase of such Equipment, then the amount to be paid to Lessor shall include interest computed at the rate of 11% per annum from the date of payment of such amount by Lessor to the date of payment by Lessee. Upon such payment Lessee shall be subrogated to Lessor's claim, if any, against the manufacturer or other supplier of the Equipment, provided that Lessee shall indemnify and save Lessor, Lessor's successor or Lessor's assignee, harmless from any and all loss, damage, cost, expense, including attorney's fees, and liability to the manufacturer or other supplier of the Equipment resulting, directly or in anyway indirectly, from the wrongful rejection of the Equipment or from failure to comply with the duties imposed upon a merchant buyer by the Uniform Commercial Code, including without limitation, Section 2-603 thereof. However, if within such eight day period Lessee shall not have executed and delivered to Lessor a Delivery Acceptance Receipt nor shall have given written notice to Lessor rejecting the Equipment, Lessee agrees that it shall be conclusively presumed, as between Lessor and Lessee, that Lessee has fully inspected the Equipment, that the Equipment is in full compliance with the terms of this Lease and in good condition and repair, and that Lessee is satisfied with and has accepted the Equipment. If, for any reason whatsoever, the Equipment shall not have been delivered to Lessee at the address set forth above and accepted by Lessee in accordance with this Section 4 by the 90th day after the Requested Date of Delivery then Lessor shall have the option to cancel this Lease. If Lessor shall cancel this Lease, Lessee shall, on demand by Lessor, pay Lessor any amount theretofore paid or owing by Lessor in respect of the purchase of such Equipment. In the event that Lessor has previously paid an amount in respect of the purchase of such equipment, then the amount to be paid to Lessor shall include interest computed at the rate of 11% per annum from the date of payment of such amount by Lessor to the date of payment by Lessee. Upon such payment Lessee shall be subrogated to Lessor's claim, if any, against the manufacturer or other supplier of the Equipment, provided that Lessee shall indemnify and save Lessor, Lessor's successor or Lessor's assignee, harmless from any and all loss, damage, cost, expense, including attorney's fees, and liability to the manufacturer or other supplier of the Equipment.

Section 5. CLAIMS AGAINST SUPPLIER. Lessor agrees to use its best efforts to obtain Supplier's agreement that all representations, warranties and agreements, if any, made by Supplier to Lessor or Lessee may be enforced by Lessor and/or Lessee jointly and severally; provided, however, that Lessee agrees that it shall make no claim against Supplier except upon three days written notice to Lessor and provided, further, that Lessee shall not be permitted to exercise such right in the event that it shall be in breach of any of the terms, provisions or conditions of this Lease. Exercise of any rights obtained by Lessee under this section relieve Lessee of any of its obligations under this Lease.

THE ADDITIONAL PROVISIONS ON THE REVERSE SIDE HEREOF ARE INCLUDED IN, AND MADE A PART OF, THIS LEASE. THIS IS A NON-CANCELLABLE LEASE FOR THE TERM INDICATED ABOVE.

See Rider(s) No. I

SUB-
NAME OF LESSEE: Interstate Distribution Services, Inc.

X _____ President
Authorized Signature Title

X _____
Authorized Signature Title

X _____
Authorized Signature Title

ACCEPTED 26/9/74 19____

_____
By Vice President or Secretary-Treasurer

LEASE ORIGINAL

Corporate Seal

LOCATION OF EQUIPMENT. The Equipment ... be kept at the address set forth ... of this Lease under the control of Lessee ... This item of Equipment and shall not be removed therefrom ... Lessee's prior written consent. Lessee will permit possession or control of the Equipment or sell, pledge, mortgage or encumber the Equipment or any ...

USE, MAINTENANCE AND REPAIR. The Lessee shall use the Equipment solely in the conduct of its business in a careful and proper manner and in compliance with all legal requirements. The ... and cost and expense, will keep the Equipment in good repair, condition and working order and shall furnish any and all parts ... labor required for that purpose but, at Lessor's request, Lessee shall at its sole cost ... into a full maintenance contract with the Supplier or any other entity satisfactory to Lessor and shall maintain such contract in effect throughout the term of this Lease.

... not modify the Equipment in any way without the prior written consent of Lessor. All accessories, parts and replacements ... or which are added to or become attached to the Equipment or any item thereof shall ... become the property of Lessor, shall be deemed incorporated in and an accession to the Equipment and subject to the terms of the Lease as if originally leased hereunder. Lessee shall execute such documents relating to ... parts and replacements as Lessor may deem necessary, including financing and continuation statements under the Uniform Commercial Code. Lessor shall have the right, from time to time, during reasonable business ... Lessee's premises or elsewhere for the purpose of confirming the existence, condition and proper maintenance of the Equipment.

10. INSURANCE. Lessee shall insure both Lessor and Lessee as their interests may appear and as named insureds with respect to liability, including without limitation, persons, automobile and employer's liability, injury, death, damage to or loss of use of property resulting from the ownership, use and operation of the Equipment, with insurers satisfactory to Lessor and under policies satisfactory to Lessor, in amounts satisfactory to Lessor and under policies satisfactory to ... Lessee shall insure the Equipment, with insurance satisfactory to Lessor, for the full replacement value new thereof (without consideration for depreciation) against all risks of loss, theft, destruction or damage to ... Lessee shall be liable for any loss not covered by insurance. Such insurance for loss, theft, destruction or damage to the Equipment shall provide that proceeds covering losses, theft, destruction or damage shall be ... payable and shall be returned as hereinafter provided in Section 11. The insurers under any policies obtained in accordance with this section shall agree by endorsement on the respective insurance policies issued by them ... that such insurance as to Lessor and its assigns shall not be invalidated by any act, omission or neglect of ... Lessee or of written notice of any alteration or cancellation of such policies. Such insurers shall further agree that said insurance as to Lessor and its assigns shall not be invalidated by any act, omission or neglect of ... Lessee in giving notice of failure by Lessee to procure or maintain all of the above described insurance, Lessor shall have the right upon ten (10) days prior written notice to Lessee to effect such insurance, but the existence of such right ... and an obligation of Lessor nor shall the existence of such right be deemed a limitation of any rights of Lessor under Section 17 or elsewhere of this Lease any sums expended by Lessor in effecting such insurance, ... shall be charged to the Lessee, together with interest thereon at the rate of fifteen percent (15%) per annum, as additional rent in the month following its occurrence. The Lessee shall provide Lessor with all certificates ... that may be considered necessary by Lessor. The insurance shall be effective from the date that any of the Equipment is placed upon Lessee's premises. Lessee hereby irrevocably appoints Lessor as Lessee's attorney-in-fact ... to claim for, receive payment of, and execute and endorse all documents, checks or drafts received in payment for loss or damage under any such insurance policy and acknowledges that the power of attorney granted ... is coupled with an interest.

11. RISK OF LOSS OR DAMAGE. All risks of loss, theft, destruction and damage to the equipment from whatever cause, are assumed by Lessee, who shall be responsible therefor throughout the term ... In the event of loss, theft, destruction or damage of any kind whatsoever from any and every cause whatsoever to any item or items or all of the Equipment, Lessee, at the option of Lessor, shall promptly at the time ... thereof and at its sole cost and expense:

(a) repair the same in good repair, condition and working order; or

(b) replace the same with Equipment of the same make and model, satisfactory to Lessor, and in good repair, condition and working order; or

(c) if the Equipment or a material portion thereof is determined by Lessor to be lost, stolen, destroyed or damaged beyond repair, pay Lessor the aggregate amount of all unpaid rentals payable throughout the entire term ... of this Lease and this Lease shall thereupon be deemed terminated. Lessee's obligations to perform under this section shall not be affected by Lessor's inability to obtain insurance proceeds for the loss, theft, destruction or damage ... Lessee shall not be obligated to undertake, by litigation or otherwise, the collection of such proceeds or of any claim against any person for loss, theft, destruction or damage to the Equipment.

... When Lessor shall have received any insurance proceeds on account of any loss, theft, destruction or damage to the Equipment and if Lessor, in its sole judgment, shall be satisfied that Lessee has properly performed the ... undertaken by it under this Section 11, Lessor shall pay over to Lessee out of such proceeds the actual amounts expended by Lessee under subparagraphs (a), (b) or (c), as the case may be, of this section. In no event ... shall Lessor be required to pay Lessee an amount greater than the net amount of the insurance proceeds received by it.

... Loss of or damage to any of the Equipment shall impair any obligations of the Lessee under this Lease, including without limitation, the obligation to pay rent which shall continue in full force and effect until cancellation ... of this Lease.

12. INDEMNITY. Lessee assumes all responsibility for the manufacture, selection, purchase, delivery, possession, use, condition, operation, maintenance, repair, testing and/or return of the Equipment, and, as ... between the parties hereto, the liability, if any, for personal injuries and property damage howsoever arising from or incidental thereto, whether such injuries be to agents or employees of Lessee or to third parties and whether ... due to the property of Lessee or of others, Lessee will indemnify and save Lessor, Lessor's successor and Lessor's assignee and their agents, servants, successors and assigns, harmless of, from and against all claims, costs, ... including reasonable fees of attorneys and accountants) liabilities, losses and damages resulting directly or in any way indirectly from or pertaining to the Equipment or the manufacture, selection, purchase, delivery, possession (including, but not limited to, latent and other defects and whether or not discoverable by it), use, operation, maintenance, repair, testing and/or return thereof and the recovery of claims under insurance policies ... Lessee shall also be liable to indemnify and save Lessor, Lessee's successor and Lessor's assignee and their agents, servants and assigns, harmless from any loss, damage or destruction of any item of Equipment and from any ... resulting property damage howsoever arising from a breach by Lessee of its obligations hereunder.

13. SECURITY DEPOSIT. Simultaneously with the execution of this Lease, Lessee is depositing with Lessor, in addition to an amount at least equal to the first installment of rent as specified in Section 6 ... the sum specified on the front of this Lease under the caption "Amount of Security Deposit", which sum shall be retained by Lessor as security for the payment and performance of Lessee's obligations under this Lease. It is ... agreed that in the event Lessee defaults in respect of any of the terms, provisions and conditions of this Lease, including, but not limited to, the payment of rent and additional rent, Lessor, without limiting any of its rights under ... this Lease may use, apply or retain the whole or any part of the security so deposited to the extent required for the performance of any obligations as to which Lessee is in default and, in any such instances, Lessee shall on demand ... promptly remit such sums to Lessor so that Lessor may at all times be secured by the full amount specified on the front of this Lease. In the event that Lessee shall fully and faithfully comply with all of the terms, provisions, covenants ... and conditions of this Lease, the security shall be returned to Lessee after the date fixed as the end of this Lease and after surrender of the Equipment in accordance with Section 19 hereof. In the event of an assignment of ... this Lease by Lessor, Lessor shall have the right to transfer the security to its assignee and Lessor shall thereupon be released by Lessee from all liability for the return of such security; and it is agreed that the provisions hereof shall ... apply to any assignment made of the security to a new assignee. Lessee covenants that it will not assign or encumber or attempt to assign or encumber the monies deposited herein as security and that neither Lessor nor its successors ... or assigns shall be bound by any such assignment, encumbrance, attempted assignment or attempted encumbrance.

14. TAXES. Lessee shall pay all costs, expenses, fees and charges incurred in connection with the use and operation of the Equipment during the Lease term hereunder. Lessee shall pay any and all sales, use, excise, ... stamp, documentary, personal property and other taxes, and declare, report and pay all assessments and other governmental charges whatsoever by whomsoever payable on or relating to the Equipment and the purchase, sale ... or operation thereof (other than federal or state income tax payable by Lessor) as and when the same shall become due and payable. In addition, Lessee shall keep the Equipment free and clear of all levies, liens and ... charges. Lessor shall have no obligation to dispute or contest the imposition or collection or the basis of computation of any such tax or other governmental charge payable by Lessee.

15. COLLECTION COSTS. If any of the installments of rents and amounts of additional rent provided for herein are not paid within (10) days after such installments shall be due, Lessee agrees to pay ... at Lessor's option, in addition to any and all other remedies provided in this Lease or available at law or in equity, as and for Lessor's costs of collection, interest at the rate of 15% per annum on all sums not paid when ... due. Failure by Lessor of the rights granted to it under this Section 15 shall not be deemed a waiver of any of the rights and/or remedies otherwise granted to it under this Lease, including, without limitation, the right, ... at Lessor under Section 17 hereof, to declare the Lessee in default.

16. ASSIGNMENT; SUBLEASE.

16.1 BY LESSEE. Lessee shall not assign, transfer, pledge or otherwise dispose of this Lease or its interest hereunder nor enter into any sublease, lend any of the Equipment, or permit it to be used by anyone other ... than its authorized employees without the prior written consent of Lessor.

16.2 BY LESSOR. Lessee acknowledges notice of Lessor's intention to assign Lessor's interest in this Lease, and Lessee agrees that Lessor may assign this Lease and/or mortgage the Equipment, in whole or in part, ... notice to Lessee but upon receiving any notice thereof Lessee shall promptly acknowledge receipt thereof in writing. Each such assignee and/or mortgagee shall have all of the rights, but none of the obligations of Lessor under ... this Lease except the obligation to continue to keep the Equipment subject to this Lease in accordance with the terms and conditions hereof. Lessee agrees that it shall not assert against any assignee or mortgagee of Lessor any ... defense, set-off, recoupment, claim or counterclaim that Lessee may have against Lessor and Lessee shall remain liable for its obligations hereunder in spite of any such assignment or mortgage. Lessor's assignee or mortgagee may ... enforce in the Lease or mortgage, as the case may be, under the same terms and conditions. Upon any assignment or re-assignment of this Lease by Lessor or Lessor's successors in interest, as the case may be, Lessee shall, at the ... request of Lessor or any of its successors in interest, as the case may be, execute, acknowledge and deliver a statement in writing certifying that this Lease is unmodified and in full force and effect (or if there have been modifications, that this Lease is in full force and effect as modified and stating the modifications), and the dates to which the rents and other charges have been paid in advance, and if there are any defaults claimed by Lessee. Such statement ... shall obtain an agreement by Lessee to make all future payments of rents and other charges under the Lease directly to Lessor or Lessor's successor in interest, as the case may be.

17. DEFAULT. If Lessee shall default in the payment of any sums to be paid hereunder and such default shall continue for more than ten (10) days after Lessor has given notice thereof (except that Lessee shall ... be entitled to notice of default in the case of non-payment or late payment of rent), or if Lessee has breached any other provision of this Lease, or if a petition in bankruptcy or for reorganization or for the appointment of a ... trustee of any part of the property of Lessee; or any other proceedings for the relief of debtors shall be filed by or against Lessee or if Lessee shall make a general assignment for the benefit of creditors, or suspend ... transact any act amounting to business failure, or if an attachment shall be levied or a tax lien filed against any of Lessee's property, or if Lessee shall make a voluntary or involuntary assignment or transfer of all, or ... substantially all, of its property, or an unauthorized assignment of its interest hereunder, or if Lessee, in Lessor's sole opinion, shall undergo any material change as to increase Lessor's risk, including any eventuality expressly ... provided for by the terms of this Lease, then in any of such events, Lessor, at its option, may declare the Lessee to be in default, in which case Lessor shall have the right to exercise any one or more of the following remedies:

(a) Lessor may recover from Lessee as immediately due and payable the entire amount of unpaid rentals for the balance of the term of this Lease, together with any and all other charges which may be then or which become ... due, including without limitation, costs of collection and attorneys' fees (not to exceed 20% of the amount collected);

(b) Lessor may terminate this Lease and/or within thirty (30) days thereof, demand a return of the Equipment to the destination specified by Lessor, freight prepaid by Lessee;

(c) Lessor, without demand, or notice to or consent of Lessee, and without any court order or other process of law, may take possession of any or all items of Equipment, wherever the Equipment may be located for that ... purpose upon any premises owned or leased by Lessee without liability for any damages occasioned by such taking possession. Lessor may thereafter hold the Equipment free and clear of this Lease and of any rights of Lessee ... The return or retaking of the Equipment shall not constitute termination of this Lease. Lessor may sell all or any part of the Equipment free and clear of any claims of Lessee at private sale or sales, upon ten (10) days ... notice to Lessee, at such price or prices and upon such terms as Lessor may elect, or at public sale or sales at which Lessor may bid for and purchase any or all of the Equipment. Lessor shall also have the right to ... lease any of the Equipment free and clear of any claims of Lessee, upon ten (10) days prior written notice to Lessee, at such rental or rentals and upon such terms and conditions as Lessor may elect. Lessee agrees that prospective ... purchasers and lessees of the Equipment shall have the right to enter upon Lessee's premises to inspect such Equipment and that Lessor may conduct its sales and/or leasing transactions on Lessee's premises. The net proceeds ... of such sale or sales and/or the net rentals received under any new leasings, less 5% of the Total Cost of the Equipment as the case may be, shall be applied (i) first to the payment of all costs and expenses of every kind ... incurred in connection with or incidental to the holding, preparing for sale or lease and the selling or leasing of the Equipment, including attorney's fees, (not to exceed 20% of the amount collected) and then (ii) to the ... Lessor for the entire term provided for herein and then remaining unpaid. The Lessee shall remain liable to the Lessor for the payment of any deficiencies, together with interest thereon computed at the rate of fifteen percent ... per annum. The surplus, if any, shall be liquidated damages for the breach of this agreement and shall be payable to Lessor.

Lessor may pursue any other remedy at law or in equity.

as to such item or items of Equipment with respect to which Lessor elects to terminate this Lease, this Lease shall continue in full force and effect and Lessee shall be bound to continue to pay and perform its obligations ... repossession or resale of any item of Equipment shall not bar an action for a deficiency as above provided, and the bringing of an action for the entry of judgment against the Lessee shall not bar the Lessor's right to ... or all items of Equipment.

11 **OPTION TO RENEW.** Lessee shall have the option to renew this Lease with respect to the Equipment as an entirety for such additional term, if any, and for such rental as is specified on the front of ... provided that such option shall be exercisable only upon Lessee's giving written notice to Lessor of Lessee's intent so to renew. Lessee's renewal notice shall be given during the third month preceding the expiration of the ... of this Lease and shall be accompanied by Lessee's check in an amount equal to the aggregate rentals payable by Lessee during the first year of the renewal period.

12 **SURRENDER.** At the expiration of this Lease or upon demand by Lessor made pursuant to paragraph (b) of Section 17 hereof, or upon the termination of this Lease in any manner whatever, Lessee shall ... and ship the same to the destination specified by Lessor and by such carrier as Lessor shall designate. Lessee shall return the Equipment in good operating order and repair. Any and all transportation costs ... returning of the Equipment as aforesaid shall be borne by the Lessee. Transportation costs shall be deemed to include insurance for the full replacement value of the Equipment without consideration for depreciation.

13 **MISCELLANEOUS.**

13.1 **REMEDIES CUMULATIVE.** Lessor may pursue any remedy available to it at law or in equity. Each and every right and remedy hereby specifically given to Lessor may be exercised from time to time or ... and as often and in such order as may be deemed expedient by Lessor. All such rights and remedies shall be cumulative and the exercise of one shall not be deemed a waiver of the right to exercise any other or others. ... action by Lessor in the exercise of any such power or remedy and no renewal or extension of any payments due hereunder shall impair any such power or remedy or shall be construed to be a waiver of any default or ... thereto.

13.2 **NON-CANCELLABILITY.** The Lease hereunder shall continue in full force and effect and be non-cancellable, except in accordance with its terms for the rental term herein provided.

13.3 **LESSOR'S RIGHT TO CURE DEFAULTS.** In the event of failure of Lessee to pay any costs, expenses, fees, charges or taxes (as provided in Section 14 above) or to procure or maintain insurance ... Section 13 above), or failure to pay or perform any other obligation hereunder, Lessor shall have the right, but shall not be obligated, upon ten (10) days prior notice to Lessee to act in Lessee's place and stead, and ... Lessee shall repay Lessor the cost thereof with the next payment of rent as additional rent together with interest (at the rate of 15% per annum) from the date of any such payment by Lessor. The exercise by Lessor ... entitled to it under this subsection shall not be deemed a waiver of any of the rights and/or remedies otherwise granted to it under this Lease, including, without limitation, the right, granted to it under Section 17 ... of the Lessee in default.

13.4 **ENTIRE AGREEMENT.** This Lease, together with the schedule attached hereto, if any, constitutes the entire agreement between the parties hereto, and can only be modified by further agreements in ... writing by both such parties. No representations, warranties or agreements, oral or written, expressed or implied have been made by either party hereto with respect to the Lease hereunder or to the Equipment covered hereby, ... except as herein provided.

13.5 **COOPERATION.** Lessee shall provide Lessor with such corporate resolutions, opinions of counsel, certificates and other documents as Lessor may reasonably request from time to time. Lessee shall execute such ... acknowledgements, including without limitation, financing and continuation statements under the Uniform Commercial Code as Lessor shall require for filing or recording this Lease or for effecting a pledge or assignment ... Secretary of State of the state of incorporation or residence of Lessee, the Secretary of State of the state in which Lessee's principal office is located (if different from the state of incorporation or residence) and ... County Clerk of the county in which the Equipment leased hereunder is located and used and such other places as Lessor shall deem necessary or desirable. Lessor is hereby authorized to file any such statements ... nature of Lessee or any of its subsidiaries. Whenever requested by its assignee, or a third party, Lessor will join with Lessee in executing financing statements pursuant to the Uniform Commercial Code.

13.6 **AGREEMENT AS LEASE; VENUE; SERVICE OF PROCESS.** IT IS HEREBY STIPULATED BY AND BETWEEN LESSOR AND LESSEE THAT THIS AGREEMENT SHALL BE DEEMED ... AND SAID LEASE SHALL BE INTERPRETED AND THE RIGHTS AND LIABILITIES OF THE PARTIES DETERMINED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK. AS PART OF THE CONSIDERA- ... FOR EXECUTING THIS LEASE, LESSEE HEREBY AGREES THAT ALL ACTIONS OR PROCEEDINGS ARISING, DIRECTLY OR INDIRECTLY, FROM THIS LEASE SHALL BE LITIGATED ONLY IN COURTS LOCATED ... WITHIN THE STATE OF NEW YORK, AND LESSEE HEREBY CONSENTS TO THE JURISDICTION OF ANY COURT LOCATED WITHIN THE STATE OF NEW YORK, AND WAIVES PERSONAL SERVICE OF ANY AND ALL PROCESS ... UPON LESSEE AND CONSENTS THAT ALL SUCH SERVICE OF PROCESS MAY BE MADE BY CERTIFIED OR REGISTERED MAIL, RETURN RECEIPT REQUESTED, DIRECTED TO LESSEE AT THE ADDRESS HEREINABOVE ... AND SERVICE SO MADE SHALL BE COMPLETE FIVE (5) DAYS AFTER THE SAME HAS BEEN POSTED AS AFORESAID.

13.7 **TAX TREATMENT.** No representation is, or has been, made as to the treatment for income tax purposes of payments hereunder, it being understood that whether a particular agreement is to be treated for ... income tax purposes as a lease depends upon the facts and circumstances in each case.

13.8 **COUNTERPARTS AND RECORDING.** This Lease may be executed in any number of separate counterparts, each counterpart constituting an original. The parties are to execute, acknowledge and ... deliver such instruments of this agreement as may be required at any time in order to comply with the provisions of any applicable law requiring the recording or filing of this agreement or a copy hereof in any public office ... in any state or any political or governmental subdivision of any state. Lessee agrees to pay the fees and charges imposed by law for such mandatory recording or filing and the necessary expenses of the Lessor, ... with respect to the following.

13.9 **FAILURE TO SURRENDER AS EXTENSION.** If, upon the expiration of the full term of this Lease as above provided for, Lessee does not immediately return the Equipment to Lessor and ... such failure to surrender the Equipment shall continue to be held and leased under and in accordance with the conditions of this agreement contained, and this agreement shall thereupon be extended indefinitely as to term, ... but the Lessor may, after thirty (30) days notice in writing to the other may terminate it, whereupon Lessee shall forthwith deliver the equipment to Lessor.

13.10 **HEADINGS.** The section headings contained herein have been inserted as a matter of convenience only and shall not be deemed to affect the interpretation of the Lease.

13.11 **SEVERABILITY.** If a provision hereof or any remedy provided for shall be invalid under any applicable law, such provision shall be inapplicable and deemed omitted, but the same shall not affect ... the validity of the remainder of this Lease which shall be construed to effect the intention of the parties hereto.

13.12 **NOTICES.** All notices or other communications, including rent statements, authorized or required by this Lease shall be made to the parties hereto in writing at the addresses shown set forth on the front of this ... Lease, or to such other address as may be designated by the parties hereto in writing. Any notice required by this Lease to be given in writing shall be deemed to be properly served if ... delivered in person or sent by registered or certified mail, postage prepaid, addressed to the party to be notified at the address stated herein or at such other address as such party may ... thereafter designate in writing.

13.13 **INTEREST.** In the event that the rate of interest at any time payable hereunder by either party to the other shall exceed the legal amount so payable, then the interest to be paid shall be computed at the ... highest lawful amount payable.

13.14 **AGREEMENTS BY LESSOR.** Neither this Lease nor any modification hereto, oral or written, shall be deemed binding upon Lessor unless executed by Lessor's ... and no employee or agent shall be deemed to have the authority to bind Lessor in any respect.

RIDER NUMBER 1 TO SUBLEASE AGREEMENT NO. 057/82/000 126/3 BETWEEN INTERMODAL SYSTEMS LEASING, INC., SUBLESSOR AND INTERSTATE DISTRIBUTION SERVICES, INC., SUBLESSEE

The printed part of this Sublease is hereby amended, modified and supplemented as follows: To the extent that the printed part of the Sublease and this Rider are compatible, each shall be deemed in addition to and in expansion of, the other. Wherever there is any conflict between this Rider and the printed part of this Sublease, the provisions of this Rider are paramount and the Sublease shall be construed accordingly.

1. For purposes of this Sublease only, and without in any way changing any of the terms, provisions, conditions and covenants in the printed part of this Sublease or this Rider, all references in the printed part of this Sublease to "Lessor" shall mean "Sublessor", all references to "Lease" shall mean "Sublease" and all references to "Lessee" shall mean "Sublessee".

2. This Sublease, and the rights of Sublessor and Sublessee hereunder, shall be subordinate in all respects to an Agreement of Lease No. 057/82/000 126/0 (the "Prime Lease") between Locafrance U. S. Corporation, with a place of business at 919 Third Avenue, New York, New York ("Locafrance") as lessor, and Sublessor as lessee, and to the rights of Locafrance thereunder.

3. Sublessee hereby acknowledges Sublessor's right to assign its interests under this Sublease to Locafrance, and that it shall do so and consents to such assignment, and in consideration of this Sublease, the Sublessee agrees that its obligation to pay directly to Locafrance the amounts (whether designated as rentals or otherwise) which become due as set forth in the Sublease shall be absolutely unconditional, and it promises so to pay the same to Locafrance at its address hereinbefore stated, notwithstanding any defense, set-off or counterclaim whatsoever, whether by reason of breach of the Sublease or otherwise, which it may or might now or hereafter have as against the Sublessor (the Sublessee reserving its right to have recourse directly against the Sublessor on account of any such defense, set-off or counterclaim).

4. Sublessor and Sublessee each recognize and agree that Locafrance is the owner of the Equipment and the Equipmert shall at all times remain the property of Locafrance, and that neither Sublessor or Sublessee has any right, title, interest or equity in the Equipment whatsoever except as may be set forth in the Prime Lease and Sublease. Sublessee shall at all times protect and defend, at its own cost and expense, the title of Locafrance from and against all claims, liens and legal process of creditors of Sublessee and Sublessor, and keep all the Equipment free and clear from all such claims, liens and process. The Equipment is, and shall at all times remain, personal property irrespective of the way it may be affixed to the realty, and Sublessee shall maintain each item of Equipment so that it may be removed from any building in which it is placed without damaging such building. Sublessee will so notify any landlord or mortgagee of the premises in which the Equipment is kept and will obtain the agreement thereto by all such landlords and mortgagees. If at any time during the term hereof Locafrance supplies Sublessee with labels, plates or other markings, stating that the Equipment is owned by Locafrance, Sublessee shall affix and keep the same upon a prominent place on each and every item comprising the Equipment.

5. Any default by Sublessor under the Prime Lease shall be construed to be a default by Sublessee under this Sublease thereby entitling Locafrance to exercise and to avail itself of all of its rights and remedies under the Prime Lease; provided, however, if Sublessee is not then in default under this Sublease, Sublessee may, if Locafrance consents in writing, continue to have the quiet use and enjoyment of the Equipment on such terms and conditions, including the payment of rentals, as may be satisfactory to Locafrance.

6. Notwithstanding the sublease of the Equipment under this Sublease, it is understood and agreed that Sublessor shall be and remain primarily and not secondarily liable to Locafrance for the full and prompt payment and performance by Sublessor of all of its obligations, accrued and executory, under the Prime Lease.

INTERMODAL SYSTEMS LEASING, INC.

By _____

Sublessee: INTERSTATE DISTRIBUTION SERVICES, INC.

By _____

Optional Purchase Option Provision

Provided that all lease rental payments and all other payments required to be made under the Sublease have been made by Sublessee, and Sublessee has not been and is not then, in default under the terms of the Sublease, or if Sublessee has been, or is, in default under the terms of this Sublease such default has been cured, or waived by Sublessor and Locafrance, at the expiration of the base term of this Sublease, Sublessee shall have the option to purchase all of Sublessor's right, title and interest in the Equipment at a purchase price equal to the then fair market value of the Equipment determined by an independent appraiser selected by Locafrance. The cost of such appraisal shall be borne by Sublessee. The option shall be exercised by Sublessee giving written notice to Locafrance and to Sublessor that it is exercising the option granted herein, which notice shall include the date this Sublease expires. On such date the option price shall be due and payable by Sublessee to Sublessor, upon receipt of which Sublessor shall deliver to Sublessee a Bill of Sale transferring all of Sublessor's right, title and interest in the Equipment to Sublessee.

C 104 Summons without Notice, Blank Court. 9 70
Personal Service.

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80 EXCHANGE PLACE AT BROADWAY, NEW YORK

XXXXXXXXX/
SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

LOCAFRANCE U.S. CORPORATION,

Plaintiff

against

INTERSTATE DISTRIBUTION SERVICES, INC.,

Defendant

Index No.

Plaintiff designates

New York
County as the place of trial

The basis of the venue is

CAUSE OF ACTION AROSE IN NEW YORK COUNTY

Summons

Plaintiff resides at
20 Woodsbridge Road,
Katonah, New York 10536
County of

To the above named Defendant INTERSTATE DISTRIBUTION SERVICES, INC.

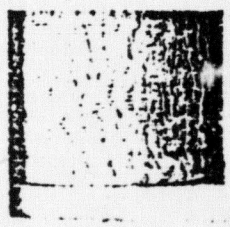
You are hereby summoned *to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance, on the Plaintiff's Attorney(s) within* 20 *days after the service of this summons, exclusive of the day of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.*

Dated, October 24, 1975

REGAN GOLDFARB HELLER WETZLER & QUINN
Attorney(s) for Plaintiff

Defendant's Address:
302 South Byrne Road
Toledo, Ohio

Office and Post Office Address
445 Park Avenue
New York, New York 10022



4. Pursuant to the aforesaid written agreement Defendant obligated itself to pay to Plaintiff monthly payments of $1,097.25 for a period of thirty-six (36) months, commencing on or about August 15, 1974.

5. Although Plaintiff has in all respects performed its obligations under the said written agreement, Defendant has failed and refused to pay Plaintiff the monthly rental payments due and owing under the said written agreement since in or about July, 1975 thereby placing Defendant in default under Section "17" thereof.

6. Defendant has been advised of, but has not cured, the aforesaid default and continues to refuse to make the aforesaid monthly rental payments.

7. By reason of the foregoing, there is now due and owing to the Plaintiff from Defendant the sum of $28,528.50.

WHEREFORE, Plaintiff demands judgment against Defendant in the sum of $28,528.50 together with interest thereon from July 15, 1975, the costs and disbursements of this action and for such other and further relief as the Court may deem just and proper.

Dated: New York, New York
October 24, 1975

Yours, etc.

REGAN GOLDFARB HELLER WETZLER
& QUINN
ATTORNEYS FOR PLAINTIFF
445 Park Avenue
New York, New York 10022
(212) 754-3000

Sub [illegible] 126/1 Commitment Date [illegible]

[illegible] Lessee:
[illegible], Inc.
[illegible]
[illegible]
Delaware

Name and Address of Supplier Sublessee:
Interstate Distribution Services, Inc.
302 South Byrne Road
Toledo, Ohio 43615
Incorporated in the State of Ohio

DESCRIPTION

See attached Schedule "A" annexed hereto

[illegible] STREET: 302 South Byrne Road
[illegible] CITY: Toledo
[illegible]MENT: COUNTY: Lucas
STATE: Ohio

[illegible] RENTAL COMMENCEMENT DATE: August 15; 1974

[illegible]GE TERM F LEASE:	PERIOD	NUMBER OF RENTALS	AMOUNT OF EACH RENTAL	SALES TAXES	TOTAL	AMOUNT OF SECURITY DEPOSIT
[illegible]onths	36 Months	36	~~$1,050~~ ~~$1,350.00~~	~~47.25~~ ~~$60.75~~	~~$1,097.25~~ ~~$1,410.75~~	$ --
[illegible]LS PAYABLE [illegible]THLY ☒ [illegible]RTERLY ☐						ADVANCE RENTAL(S) ~~$1,097.25~~ ~~$1,410.75~~ REPRESENTING PAYMENT FOR THE 1st RENTAL [illegible]
[illegible]eal Rental [illegible]'e Annually Advance						PAYABLE AT THE SIGNING OF THIS LEASE

[illegible] 1. LEASE. Lessor hereby leases to Lessee, and Lessee hereby rents from Lessor, subject to the terms, conditions and rents hereinafter set forth, the personal property listed above, or [illegible]y scheduled, in the schedule attached hereto, made a part hereof and marked Schedule "A" together with all replacement parts, additions, repairs and accessories incorporated and/or affixed [illegible] "Equipment"). It is understood that this Lease shall be effective and binding upon Lessor only when executed by Lessor ("Commitment Date") and that the term of this lease shall [illegible] upon [illegible] (the "Rental Commencement Date").

[illegible] 2. SELECTION AND ORDERING OF EQUIPMENT. Lessee has requested equipment of the type and quantity specified above or in the Schedule A attached [illegible]

[illegible] as to Equipment or any other matter by Supplier shall in any way affect Lessee's duty to pay the rent and perform its other obligations as set forth in this Lease.

[illegible] 3 NO WARRANTIES BY LESSOR. Lessee acknowledges that Lessor, Lessor's successor, or Lessor's assignee is not the manufacturer of the Equipment, the agent of the [illegible]er nor the distributor thereof and that Lessee has selected [illegible] the Equipment leased hereunder prior to having requested the Lessor to purchase it for leasing to the Lessee [illegible] LESSEE ALSO ACKNOWLEDGES THAT LESSOR HAS MADE AND MAKES NO WARRANTIES OR REPRESENTATIONS OF WHATSOEVER KIND OR NATURE DIRECT OR INDIRECT, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, AS TO THE SUITABILITY, DURABILITY, FITNESS FOR USE, MERCHANTABILITY, DESIGN [illegible]ION OF, OR AS TO THE QUALITY OR CAPACITY OF THE MATERIAL, OR WORKMANSHIP, OR MARKETABILITY, QUALITY OR OTHERWISE OF THE EQUIPMENT, OR OF THE ABILITY SUPPLIER TO PERFORM, OR THAT THE EQUIPMENT WILL SATISFY THE REQUIREMENTS OF ANY LAW, RULE, SPECIFICATION OR CONTRACT WHICH PROVIDES FOR SPECIFIC [illegible] OR OPERATORS OR SPECIAL METHODS, IT BEING AGREED THAT ALL SUCH RISKS, AS BETWEEN LESSOR AND LESSEE, ARE TO BE BORNE BY LESSEE AT ITS SOLE RISK AND [illegible]. Lessee specifically waives all rights of any kind to make a claim against the Lessor, Lessor's successor or Lessor's assignee herein for breach of any warranty of any kind whatsoever.

[illegible] 31 ASSUMPTION OF ALL RISK BY LESSEE. Inasmuch as Lessee has selected [illegible] the Equipment [illegible] and has agreed to assume all risk of loss resulting from [illegible] [illegible] for any reason whatsoever (including force majeure), it is understood and agreed that Lessee irrevocably waives any claim against Lessor for any loss or [illegible]ing from any cause, circumstance or event of whatsoever nature including but not limited to, failure of or delay in delivery, delivery to the wrong place, delivery of improper Equipment, [illegible] the Equipment, defect or unfitness of the Equipment or the installation of the same, governmental regulation, Act of God, strike, embargo or any other cause, circumstances, whether of like

RISK OF LOSS OR DAMAGE. All risks of loss, theft, destruction and damage to the equipment from whatever cause, are assumed by Lessee, who shall be responsible therefor throughout the term

SECURITY DEPOSIT. Simultaneously with the execution of this Lease, Lessee is depositing with Lessor, in addition to an amount at least equal to the first installment of rent as specified in Section 6

TAXES. Lessee shall pay all costs, expenses, fees and charges incurred in connection with the use and operation of the Equipment during the Lease term hereunder. Lessee shall pay any and all sales, use, excise,

COLLECTION COSTS. If any of the installments of rents and amounts of additional rent provided for herein are not paid within (10) days after such installments shall be due, Lessee agrees to pay

ASSIGNMENT; SUBLEASE.

BY LESSEE. Lessee shall not assign, transfer, pledge or otherwise dispose of this Lease or its interest hereunder nor enter into any sublease, lend any of the Equipment, or permit it to be used by anyone other

BY LESSOR. Lessee acknowledges notice of Lessor's intention to assign Lessor's interest in this Lease, and Lessee agrees that Lessor may assign this Lease and/or mortgage the Equipment, in whole or in part,

DEFAULT. If Lessee shall default in the payment of any sums to be paid hereunder and such default shall continue for more than ten (10) days after Lessor has given notice thereof (except that Lessee shall

...e may terminate this Lease and/or within thirty (30) days thereof, demand a return of the Equipment to the destination specified by Lessor, freight prepaid by Lessee;

...e without demand, or notice to or consent of Lessee, and without any court order or other process of law, may take possession of any or all items of Equipment, wherever the Equipment may be located for that ...ose any premises owned or leased by Lessee without liability for any damages occasioned by such taking possession. Lessor may thereafter hold the Equipment free and clear of this Lease and of any rights of Lessee ...turn or retaking of the Equipment shall not constitute termination of this Lease. Lessor may sell all or any part of the Equipment free and clear of any claims of Lessee at private sale or sales, upon ten (10) days ...e to Lessee, at such price or prices and upon such terms as Lessor may elect, or at public sale or sales at which Lessor may bid for and purchase any or all of the Equipment. Lessor shall also have the right to ...e of the Equipment free and clear of any claims of Lessee, upon ten (10) days prior written notice to Lessee, at such rental or rentals and upon such terms and conditions as Lessor may elect. Lessee agrees that pros... a bidder at the equipment shall have the right to enter upon Lessee's premises to inspect such Equipment and that Lessor may conduct its sales and/or leasing transactions on Lessee's premises. The net proceeds ...or sales and/or the net rentals received under any new leasings, less 5% of the Total Cost of the Equipment as the case may be, shall be applied (i) first to the payment of all costs and expenses of every kind ...ed in connection with or incidental to the holding, preparing for sale or lease and the selling or leasing of the Equipment, including attorney's fees, (not to exceed 20% of the amount collected) and then (ii) to the ...the entire term provided for herein and then remaining unpaid. The Lessee shall remain liable tothe Lessor for the payment of any deficiencies, together with interest thereon computed at the rate of fifteen percent ...). The surplus, if any, shall be liquidated damages for the breach of this agreement and shall be payable to Lessor.

...e may pursue any other remedy at law or in equity.

...ch item or items of Equipment with respect to which Lessor elects to terminate this Lease, this Lease shall continue in full force and effect and Lessee shall be bound to continue to pay and perform its obligations. ...estination or resale of any item of Equipment shall not bar an action for a deficiency as above provided, and the bringing of an action for the entry of judgment against the Lessee shall not bar the Lessor's right to ... items of Equipment.

OPTION TO RENEW. Lessee shall have the option to renew this Lease with respect to the Equipment as an entirety for such additional term, if any, and for such rental as is specified on the front of ...es that such option shall be exercisable only upon Lessee's giving written notice to Lessor of Lessee's intent so to renew. Lessee's renewal notice shall be given during the third month preceding the expiration of the ...s Lease and shall be accompanied by Lessee's check in an amount equal to the aggregate rentals payable by Lessee during the first year of the renewal period.

SURRENDER. At the expiration of this Lease or upon demand by Lessor made pursuant to paragraph (a) of Section 17 hereof, or upon the termination of this Lease in any manner whatever, Lessee shall ...ers and ship the same to the destination specified by Lessor and by such carrier as Lessor shall designate. Lessee shall return the Equipment in good operating order and repair. Any and all transportation costs ...turning of the Equipment as aforesaid shall be borne by the Lessee. Transportation costs shall be deemed to include insurance for the full replacement value of the Equipment without consideration for depreciation.

MISCELLANEOUS.

REMEDIES CUMULATIVE. Lessor may pursue any remedy available to it at law or in equity. Each and every right and remedy hereby specifically given to Lessor may be exercised from time to time or ...n as often and in such order as may be deemed expedient by Lessor. All such rights and remedies shall be cumulative and the exercise of one shall not be deemed a waiver of the right to exercise any other or others, ...on by Lessor in the exercise of any such power or remedy and no renewal or extension of any payments due hereunder shall impair any such power or remedy or shall be construed to be a waiver of any default or ...ereto.

NON-CANCELLABILITY. The Lease hereunder shall continue in full force and effect and be non-cancellable, except in accordance with its terms for the rental term herein provided.

LESSOR'S RIGHT TO CURE DEFAULTS. In the event of failure of Lessee to pay any costs, expenses, fees, charges or taxes (as provided in Section 14 above) or to procure or maintain insurance ...(3) above), or its are to pay or perform any other obligation hereunder, Lessor shall have the right, but shall not be obligated, upon ten (10) days prior notice to Lessee to act in Lessee's place and stead, and ...e costs necessary therefor with the next payment of rent as additional rent together with interest for the rate of 15% per annum from the date of any such payment by Lessor. The exercise by Lessor ...ent to it under this subsection shall not be deemed a waiver of any of the rights and/or remedies otherwise granted to it under this Lease, including, without limitation, the right, granted to it under Section 17 ...e Lessee in default.

ENTIRE AGREEMENT. This Lease, together with the schedule attached hereto, if any, constitutes the entire agreement between the parties hereto, and can only be modified by further agreement in ...such parties. No representations, warranties or agreements, oral or written, expressed or implied have been made by either party hereto with respect to the Lease hereunder or to the Equipment covered hereby, ...ncluded herein.

COOPERATION. Lessee shall provide Lessor with such corporate resolutions, opinions of counsel, certificates and other documents as Lessor may reasonably request from time to time. Lessee shall execute such ...statements, including financing and continuation statements under the Uniform Commercial Code as Lessor shall require for filing or recording this Lease or for effecting a pledge or assignment ...Secretary of State of the state of incorporation or residence of Lessee, the Secretary of State of the state in which Lessee's principal office is located (if different from the state of incorporation or residence) and ...e Clerk of the County in which the Equipment leased hereunder is located and used and such other places as Lessor shall deem necessary or desirable. Lessee hereby authorizes to file any such statements ...of Lessee or any of ...times. Whenever requested by Lessor, or a third party, Lessor will join with Lessee in executing financing statements pursuant to the Uniform Commercial Code.

AGREEMENT AS TO LAW; VENUE; SERVICE OF PROCESS. IT IS HEREBY STIPULATED BY AND BETWEEN ...ESSEE AND LESSEE THAT THIS AGREEMENT SHALL BE DEEMED ...THAT SUCH LEASE WAS MADE IN NEW YORK COUNTY, NEW YORK, REGARDLESS OF THE ...WHERE THE SIGNATURES OF THE PARTIES SHALL BE AFFIXED ...ERE SHALL ...ENFORCED AND THE RIGHTS AND LIABILITIES OF THE PARTIES DETERMINED IN ACCORDANCE ...OF THE STATE OF NEW YORK AS PART OF THE CONSIDERA... ...EXECUTED ...HEREBY AGREES THAT ALL ACTIONS OR PROCEEDINGS ARISING DIRECTLY OR INDIRECTLY ...SHALL BE LITIGATED ONLY IN COURTS LOCATED ...NEW YORK, ...PECIFICALLY CONSENTS TO THE JURISDICTION OF ANY COURT LOCATED WITHIN THE STATE OF NEW YORK AND WAIVES PERSONAL SERVICE OF THE ANY AND ALL PROCESS ...SO ...SERVICE OF PROCESS MAY ...MADE BY CERTIFIED OR REGISTERED MAIL ...RETURN RECEIPT REQUESTED, DIRECTED TO LESSEE AT THE ADDRESS HEREINABOVE ...BE SO MADE ...SHALL BE COMPLETE FIVE (5) DAYS AFTER THE SAME HAS BEEN POSTED AS AFORESAID.

...TAX TREATMENT. ...representation is, or has been, made as to the treatment for income tax purposes of payments hereunder, it being understood that whether a particular agreement is to be treated for ...the facts and circumstances in each case.

...BINDING. This Lease may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. The parties agree that this Lease may be executed by the parties hereto and transmitted by facsimile machine and that such facsimile shall have the same force and effect as delivery of an original document with original signatures. All parties agree that this Lease may be executed by facsimile signatures and that the facsimile signatures shall be binding on the parties hereto.

...AS EXTENSION. ...

...

...

RISK OF LOSS OR DAMAGE. All risks of loss, theft, destruction and damage to the equipment from whatever cause, are assumed by Lessee, who shall be responsible therefor throughout the term of this Lease and until the Equipment is returned to Lessor as provided herein. In the event of loss, theft, destruction or damage of any kind whatsoever from any and every cause whatsoever to any item or items or all of the Equipment, Lessee, at the option of Lessor, shall promptly at its own expense:

the same in good condition, operation and working order; or

the same with Equipment of the same make and model, satisfactory to Lessor, and in good repair, condition and working order; or

the Equipment or a portion thereof is determined by Lessor to be lost, stolen, destroyed or damaged beyond repair, pay Lessor the applicable amount of all unpaid rentals payable throughout the entire term of this Lease which is referred to as Stipulated Loss Value in the Lease. Upon such payment, this Lease shall terminate with respect to the Equipment so lost, stolen, destroyed or damaged and Lessee's obligations to perform under this section shall not be affected by Lessee's inability to obtain insurance proceeds for the loss, theft, destruction or damage to the Equipment or by Lessee's failure to perform any of its obligations under Section 11 hereof. Lessee's obligations to perform under this section shall not be affected by Lessor's inability to obtain insurance proceeds for the loss, theft, destruction or damage to the Equipment or by Lessor's failure to perform any of its obligations under Section 11 hereof. Lessee's obligations to perform under this section shall not be affected by any other reason or cause whatsoever, including without limitation, any defense, counterclaim or offset whatsoever, whether or not arising out of the transaction pursuant to which this Lease was executed by Lessee or otherwise, the collection of such proceeds or of any claim against any person for loss, theft, destruction or damage to the Equipment.

Lessor shall have received the insurance proceeds on account of any loss, theft, destruction or damage to the Equipment and if Lessor, in its sole judgment, shall be satisfied that Lessee has properly performed the covenants by it under this Section 11, Lessor shall pay over to Lessee out of such proceeds the actual amounts expended by Lessee under subparagraphs (a), (b) or (c), as the case may be, of this section. In no event shall Lessor be required to pay Lessee an amount greater than the net amount of the insurance proceeds received by it.

No damage to any of the Equipment shall impair any obligations of the Lessee under this Lease, including without limitation, the obligation to pay rent which shall continue in full force and effect until cancellation of this Lease.

INDEMNITY. Lessee assumes all responsibility for the manufacture, selection, purchase, delivery, possession, use, condition, operation, maintenance, repair, testing and/or return of the Equipment, and, as between Lessor and Lessee, the Equipment is to be at Lessee's risk. Lessee will indemnify and save Lessor, Lessor's successor and Lessor's assignees and their agents, servants, successors and assigns, harmless of, from and against all claims, costs, expenses (including reasonable fees of attorneys and accountants) liabilities, losses and damages resulting directly or in any way indirectly from or pertaining to the Equipment or the manufacture, selection, purchase, delivery, possession, use, condition, operation, maintenance, repair, testing and/or return thereof and the recovery of claims under insurance policies with respect thereto, including, but not limited to, latent and other defects and weather or not discoverable by it), use

...out demand, or notice to or consent of Lessee, and without any court order or other process of law, may take possession of any or all items of Equipment, wherever the Equipment may be located for that ... upon any premises owned or leased by Lessee without liability for any damages occasioned by such taking possession. Lessor may thereafter hold the Equipment free and clear of this Lease and of any rights of Lessee ... return or retaking of the Equipment shall not constitute termination of this Lease. Lessor may sell all or any part of the Equipment free and clear of any claims of Lessee at private sale or sales, upon ten (10) days ... to be to Lessee, at such price or prices and upon such terms as Lessor may elect, or at public sale or sales at which Lessor may bid for and purchase any or all of the Equipment. Lessor shall also have the right to ... of the Equipment free and clear of any claims of Lessee, upon ten (10) days prior written notice to Lessee, at such rental or rentals and upon such terms and conditions as Lessor may elect. Lessee agrees that pros... ... and insens of the Equipment shall have the right to enter upon Lessee's premises to inspect such Equipment and that Lessor may conduct its sales and/or leasing transactions on Lessee's premises. The net proceeds ... of sales and/or the net rentals received under any new leasings, less 5% of the Total Cost of the Equipment as the case may be, shall be applied (i) first to the payment of all costs and expenses of every kind ... ... incurred in connection with or incidental to the holding, preparing for sale or lease and the selling or leasing of the Equipment, including attorney's fees, (not to exceed 25% of the amount collected) and then (ii) to the ... of the entire term provided for herein and then remaining unpaid. The Lessee shall remain liable tothe Lessor for the payment of any deficiencies, together with interest thereon computed at the rate of fifteen percent ... per. The surplus, if any, shall be liquidated damages for the breach of this agreement and shall be payable to Lessor.

... may pursue any other remedy at law or in equity.

... such item or items of Equipment with respect to which Lessor elects to terminate this Lease, this Lease shall continue in full force and effect and Lessee shall be bound to continue to pay and perform its obligations ... ...sposition or resale of any item of Equipment shall not bar an action for a deficiency as above provided, and the bringing of an action for the entry of judgment against the Lessee shall not bar the Lessor's right to ... of items of Equipment.

OPTION TO RENEW. Lessee shall have the option to renew this Lease with respect to the Equipment as an entirety for such additional term, if any, and for such rental as is specified on the front of ... ... such option shall be exercisable only upon Lessee's giving written notice to Lessor or Lessee's intent so to renew. Lessee's renewal notice shall be given during the third month preceding the expiration of the ... ... Lease and shall be accompanied by Lessee's check in an amount equal to the aggregate rentals payable by Lessee during the first year of the renewal period.

SURRENDER. At the expiration of this Lease or upon demand by Lessor made pursuant to paragraph (b) of Section 17 hereof, or upon the termination of this Lease in any manner whatever, Lessee shall ... ... and ship the same to the destination specified by Lessor and by such carrier as Lessor shall designate. Lessee shall return the Equipment in good operating order and repair. Any and all transportation costs ... ...ing of the Equipment as aforesaid shall be borne by the Lessee. Transportation costs shall be deemed to include insurance for the full replacement value of the Equipment without consideration for depreciation.

MISCELLANEOUS.

REMEDIES CUMULATIVE. Lessor may pursue any remedy available to it at law or in equity. Each and every right and remedy hereby specifically given to Lessor may be exercised from time to time or ... as often and in such order as may be deemed expedient by Lessor. All such rights and remedies shall be cumulative and the exercise of one shall not be deemed a waiver of the right to exercise any other or others. ... by Lessor in the exercise of any such power or remedy and no renewal or extension of any payments due hereunder shall impair any such power or remedy or shall be construed to be a waiver of any default or ... event.

NON-CANCELLABILITY. The Lease hereunder shall continue in full force and effect and be non-cancellable, except in accordance with its terms for the rental term herein provided.

LESSOR'S RIGHT TO CURE DEFAULTS. In the event of failure of Lessee to pay any costs, expenses, fees, charges or taxes (as provided in Section 14 above) or to procure or maintain insurance ... ...(d) above), or if it are to pay or perform any other obligation hereunder, Lessor shall have the right, but shall not be obligated, upon ten (10) days prior notice to Lessee to act in Lessee's place and stead, and ... ...make necessary Lessor may pay itself with the next payment of rent as additional rent together with interest fat the rate of 15% per annum from the date of any such payment by Lessor. The exercise by Lessor ... ...of its under this subsection shall not be deemed a waiver of any of the rights and/or remedies otherwise granted to it under this Lease, including, without limitation, the right, granted to it under Section 17 ... ...the Lessee in default.

ENTIRE AGREEMENT. This Lease, together with the schedule attached hereto, if any, constitutes the entire agreement between the parties hereto, and can only be modified by further agreement in ... ...with each of its requirements, warranties or agreements, oral or written, expressed or implied have been made by either party hereto with respect to the Lease hereunder or to the Equipment covered hereby, ...except here

COOPERATION. Lessee shall provide Lessor with such corporate resolutions, opinions of counsel, certificates and other documents as Lessor may reasonably request from time to time. Lessee shall execute such ... ...statements, including without limitation, financing and continuation statements under the Uniform Commercial Code as Lessor shall require for filing or recording this Lease or for effecting a pledge or assignment ... ...hereof. State of the state of incorporation or residence of Lessee, the Secretary of State of the state in which Lessee's principal office is located if different from the state of incorporation or residence and ... ...in the city of the principal office where the Equipment leased hereunder is located and used and such other places as Lessor shall deem necessary or as may Lessor is hereby authorized to file any such statements ... ...on behalf of Lessee. Whenever requested by Lessor, or a third party, Lessor will join with Lessee in executing financing statements pursuant to the Uniform Commercial Code.

AGREEMENT AS TO LAW; VENUE; SERVICE OF PROCESS. IT IS HEREBY STIPULATED BY AND BETWEEN LESSOR AND LESSEE THAT THIS AGREEMENT SHALL BE DEEMED ... ...AND ENTERED INTO AT [illegible] THAT SUCH LEASE WAS MADE IN NEW YORK COUNTY, NEW YORK, REGARDLESS OF THE ORDER IN WHICH THE SIGNATURES OF THE PARTIES SHALL BE AFFIXED ... ...HERETO, THAT SUCH LEASE SHALL BE INTERPRETED AND THE RIGHTS AND LIABILITIES OF THE PARTIES DETERMINED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK AS PART OF THE CONTRA... ...NEGOTIATED AND EXECUTED IN THE STATE OF NEW YORK AND THAT ALL ACTIONS OR PROCEEDINGS ARISING DIRECTLY OR INDIRECTLY HEREUNDER SHALL BE LITIGATED ONLY IN COURTS LOCATED ... ...IN NEW YORK AND THE PARTIES HEREBY CONSENTS TO THE JURISDICTION OF ANY SUCH COURT AND WAIVES ANY OBJECTION WITH RESPECT THERETO BASED ON VENUE OR FORUM NON CONVENIENS. SERVICE OF PROCESS MAY BE MADE BY CERTIFIED OR REGISTERED MAIL RETURN RECEIPT REQUESTED DIRECTED TO LESSEE AT THE ADDRESS HEREINABOVE ... ...SET FORTH AND SERVICE SO MADE SHALL BE COMPLETE FIVE (5) DAYS AFTER THE SAME HAS BEEN POSTED AS AFORESAID.

TAX TREATMENT. [illegible] representation to, or ruling made as to the treatment for income tax purposes of payments hereunder, it being understood that whether a particular agreement is to be treated for ... ...such purposes as a lease depends upon the facts and circumstances in each case.

[illegible]

[illegible]

[illegible]

SCHEDULE "A"

EQUIPMENT LEASE AGREEMENT NO. 6[illegible] DATED [illegible]

BETWEEN [illegible] INC., AND [illegible]

Equipment	Model Number	Serial Number
~~Towmotor Forklift~~	~~502S~~	~~670624~~
" "	502S	640392
" "	502S	640320
" "	502S	660740
~~"~~ ~~"~~	~~502S~~	~~660707~~
" "	502S	660735
" "	502S	670058
" "	502S	660738
" "	502S	660716

RIDER ATTACHED TO AND MADE A PART OF
LEASE NO. 057/22/000 126/0 DATED SEPTEMBER 30, 1
BY AND BETWEEN [illegible], INC., SUBLESSOR AND
INTERNATIONAL DISTRIBUTION SERVICES, INC.,
SUBLESSEE

The printed part of this Sublease is hereby amended, modified and supplemented as follows: To the extent that the printed part of the Sublease and this Rider are compatible, each shall be deemed in addition to and in expansion of, the other. Wherever there is any conflict between this Rider and the printed part of this Sublease, the provisions of this Rider are paramount and the Sublease shall be construed accordingly.

1. For purposes of this Sublease only, and without in any way charging any of the terms, provisions, conditions and covenants in the printed part of this Sublease or this Rider, all references in the printed part of this Sublease to "Lessor" shall mean "Sublessor", all references to "Lease" shall mean "Sublease" and all references to "Lessee" shall mean "Sublessee".

2. This Sublease, and the rights of Sublessor and Sublessee hereunder, shall be subordinate in all respects to an Agreement of Lease No. 057/22/000 126/0 (the "Prime Lease") between Locafrance U. S. Corporation, with a place of business at 919 Third Avenue, New York, New York ("Locafrance" as lessor, and Sublessor as lessee, and to the rights of Locafrance thereunder.

3. Sublessee hereby acknowledges Sublessor's right to assign its interests under this Sublease to Locafrance, and that it shall do so and consents to such assignment, and in consideration of this Sublease, the Sublessee agrees that its obligation to pay directly to Locafrance the amounts (whether designated as rentals or otherwise) which become due as set forth in the Sublease shall be absolutely unconditional, and it promises so to pay the same to Locafrance at its address hereinbefore stated, notwithstanding any defense, set-off or counterclaim whatsoever, whether by reason of breach of the Sublease or otherwise, which it may or might now or hereafter have as against the Sublessor (the Sublessee reserving its right to have recourse directly against the Sublessor on account of any such defense, set-off or counterclaim).

4. Sublessor and Sublessee each recognize and agree that Locafrance is the owner of the Equipment and the Equipment shall at all times remain the property of Locafrance, and that neither Sublessor or Sublessee has any right, title, interest or equity in the Equipment whatsoever except as may be set forth in the Prime Lease and Sublease. Sublessee shall at all times protect and defend, at its own cost and expense, the title of Locafrance from and against all claims, liens and legal process of creditors of Sublessee and Sublessor, and keep all the Equipment free and clear from all such claims, liens and process. The Equipment is, and shall at all times remain, personal property irrespective of the way it may be affixed to the realty, and Sublessee shall maintain each item of Equipment so that it may be removed from any building in which it is placed without damaging such building. Sublessee will so notify any landlord or mortgagee of the premises in which the Equipment is kept and will obtain the agreement thereto by all such landlords and mortgagees. If at any time during the term hereof Locafrance supplies Sublessee with labels, plates or other markings, stating that the Equipment is owned by Locafrance, Sublessee shall affix and keep the same upon a prominent place on each and every item comprising the Equipment.

5. Any default by Sublessor under the Prime Lease shall be construed to be a default by Sublessee under this Sublease thereby entitling Locafrance to exercise and to avail itself of all of its rights and remedies under the Prime Lease; provided, however, if Sublessee is not then in default under this Sublease, Sublessee may, if Locafrance consents in writing, continue to have the quiet use and enjoyment of the Equipment on such terms and conditions, including the payment of rentals, as may be satisfactory to Locafrance.

6. Notwithstanding the sublease of the Equipment under this Sublease, it is understood and agreed that Sublessor shall be and remain primarily and not secondarily liable to Locafrance for the full and prompt payment and performance by Sublessor of all of its obligations, accrued and executory, under the Prime Lease.

INTERMODAL SYSTEMS LEASING, INC.

By _____

Sublessee: INTERSTATE DISTRIBUTION SERVICES, INC.

By _____

Optional Purchase Option Provision

Provided that all lease rental payments and all other payments required to be made under the Sublease have been made by Sublessee, and Sublessee has not been and is not then, in default under the terms of the Sublease, or if Sublessee has been, or is, in default under the terms of this Sublease such default has been cured, or waived by Sublessor and Locafrance, at the expiration of the base term of this Sublease, Sublessee shall have the option to purchase all of Sublessor's right, title and interest in the Equipment at a purchase price equal to the then fair market value of the Equipment determined by an independent appraiser selected by Locafrance. The cost of such appraisal shall be borne by Sublessee. The option shall be exercised by Sublessee giving written notice to Locafrance and to Sublessor that it is exercising the option granted herein, which notice shall be given before the date the Sublease expires. On such date the option price shall be due and payable by Sublessee to Sublessor, upon receipt of which Sublessor shall deliver to Sublessee a Bill of Sale transferring all of Sublessor's right, title and interest in the Equipment to Sublessee.

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80 EXCHANGE PLACE AT BROADWAY, NEW YORK

C 104 Summons with Notice, Blank Cont. & to Personal Service

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

LOCAFRANCE U.S. CORPORATION,

Plaintiff

against

SERVICECENTER, INC.
13746 Rider Trail
Earth City

Defendant

Index No.

Plaintiff designates New York County as the place of trial

The basis of the venue is THE CAUSE OF ACTION AROSE IN NEW YORK COUNTY

Summons

Plaintiff resides at 20 Woodbridge Road Katonah, New York County of

To the above named Defendant SERVICECENTER, INC.

You are hereby summoned to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance, on the Plaintiff's Attorney(s) within 20 days after the service of this summons, exclusive of the day of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Dated, October 23, 1975

REGAN GOLDFARB HELLER WEIZLER & QUINN
Attorney(s) for Plaintiff

Defendant's Address:
13746 Rider Trail
Bridgeton, Missouri
63044

Office and Post Office Address
445 Park Avenue
New York, New York 10022

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

----------X

LOCAFRANCE U.S. CORPORATION, :

Plaintiff, : COMPLAINT

-against- : Index No.

SERVICECENTER, INC., :

Defendant. :

----------X

Plaintiff, by its attorneys, REGAN GOLDFARB HELLER WETZLER & QUINN, complaining of Defendant, alleges as follows:

1. Plaintiff is a Corporation organized and existing under and by virtue of the laws of the State of Delaware having at all relevant times herein maintained its principal place of business at 919 Third Avenue, in the City, County and State of New York and now maintaining an office at 20 Woodsbridge Road, Katonah, New York.

2. Upon information and belief, Defendant SERVICE-CENTER, INC. ("Defendant") is a Corporation organized and existing under and by virtue of the laws of the State of Missouri with offices at 13746 Rider Trail, Bridgeton, Missouri

3. On or about August 15, 1974, Plaintiff and Defendan entered into a written agreement (a copy of which is annexed hereto as Exhibit "A") whereby Plaintiff leased to Defendant the equipment described in the said written agreement.

4. Pursuant to the aforesaid written agreement Defendant obligated itself to pay to Plaintiff monthly payments of $463.50 for a period of thirty-six (36) months, commencing on or about August 15, 1974.

5. Although Plaintiff has in all respects performed its obligations under the said written agreement, Defendant has failed and refused to pay Plaintiff the monthly rental payments due and owing under the said written agreement since in or about July, 1975 thereby placing Defendant in default under Section "17" thereof.

6. Defendant has been advised of, but has not cured, the aforesaid defaults and continues to refuse to make the aforesaid monthly rental payments.

7. By reason of the foregoing, there is now due and owing to the Plaintiff from Defendant the sum of $11,587.50.

WHEREFORE, Plaintiff demands judgment against Defendant in the sum of $11,587.50 together with interest thereon from July 15, 1975, the costs and disbursements of this action and for such other and further relief as the Court may deem just and proper.

Yours, etc.

Dated: New York, New York
October , 1975

REGAN GOLDFARB HELLER WETZLER
& QUINN
ATTORNEYS FOR PLAINTIFF
445 Park Avenue
New York, New York 10022
(212) 754-3000

SUBLease No. 0[illegible]/82/000 [illegible] 78 Commitment date 10/12/82

NAME AND ADDRESS OF ~~LESSOR~~ SUBLESSOR:
Special System Leasing, Inc.
[illegible] 34th Street
York, New York 10001
Incorporated in State of Delaware

NAME AND ADDRESS OF ~~LESSEE~~ SUBLESSEE:
Servicecenter, Inc.
6501 Hall Street
St. Louis, Missouri
Incorporated in State of: Missouri

DESCRIPTION	Model No.	Serial No.	
Towmotor Forklift	502S	660313	1
~~[illegible]~~	~~502S~~	~~660[illegible]~~	~~1/2~~
" "	502S	670064	
" "	502S	670067	

LOCATION OF EQUIPMENT: STREET: 6501 Hall Street
CITY: St. Louis
COUNTY: St. Louis
STATE: Missouri

~~XXXXXXXXXXXXXXXX~~ RENTAL COMMENCEMENT DATE:

BASE TERM OF LEASE:	PERIOD	NUMBER OF RENTALS	AMOUNT OF EACH RENTAL	SALES TAXES	TOTAL	AMOUNT OF SECURITY DEPOSIT
Months	36 Months	36	~~$600.00~~ 450.00	~~$18.00~~ 13.50	~~$618.00~~ 463.50	$ --
RENTALS PAYABLE MONTHLY ☒ QUARTERLY ☐						ADVANCE RENTAL(S) ~~$618.00~~ 463.50 REPRESENTING PAYMENT FOR THE 1st RENTAL ~~XXXXXXXXXXXXXXXXXXXX~~ PAYABLE AT THE SIGNING OF THIS LEASE
Renewal Rental Payable Annually In Advance						

Section 1. LEASE. Lessor hereby leases to Lessee, and Lessee hereby rents from Lessor, subject to the terms, conditions and rents hereinafter set forth, the personal property listed above, or [illegible] scheduled, in the schedule attached hereto, made a part hereof and marked Schedule "A" together with all replacement parts, additions, repairs and accessories incorporated and/or affixed [illegible] (the "Equipment"). It is understood that this Lease shall be effective and binding upon Lessor only when executed by Lessor ("Commitment Date") and that the term of this lease shall [illegible] (the "Rental Commencement Date").

Section 2. SELECTION AND ORDERING OF EQUIPMENT. Lessee has requested equipment of the type and quantity specified above or in the Schedule A attached [illegible] and as [illegible] as to Equipment or any other matter [illegible] shall in any way affect Lessee's duty to pay the rent and perform its other obligations as set forth in this Lease.

Section 3. NO WARRANTIES BY LESSOR. Lessee acknowledges that Lessor, Lessor's successor, or Lessor's assignee is not the manufacturer of the Equipment, the agent of the manufacturer nor the distributor thereof and that Lessee has selected [illegible] the Equipment leased hereunder prior to having requested the Lessor to purchase it for leasing to the Lessee [illegible] LESSEE ALSO ACKNOWLEDGES THAT LESSOR HAS MADE AND MAKES NO WARRANTIES OR REPRESENTATIONS OF WHATSOEVER NATURE DIRECT OR INDIRECT, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, AS TO THE SUITABILITY, DURABILITY, FITNESS FOR USE, MERCHANTABILITY, DESIGN OR CONDITION OF, OR AS TO THE QUALITY OR CAPACITY OF THE MATERIAL, OR WORKMANSHIP, OR MARKETABILITY, QUALITY OR OTHERWISE OF THE EQUIPMENT, OR OF THE ABILITY OF ANY SUPPLIER TO PERFORM, OR THAT THE EQUIPMENT WILL SATISFY THE REQUIREMENTS OF ANY LAW, RULE, SPECIFICATION OR CONTRACT WHICH PROVIDES FOR SPECIFIC DELIVERY OR OPERATORS OR SPECIAL METHODS, IT BEING AGREED THAT ALL SUCH RISKS, AS BETWEEN LESSOR AND LESSEE, ARE TO BE BORNE BY LESSEE AT ITS SOLE RISK AND EXPENSE. Lessee specifically waives all rights of any kind to make a claim against the Lessor, Lessor's successor or Lessor's assignee herein for breach of any warranty or any kind whatsoever.

Section 4. ASSUMPTION OF ALL RISK BY LESSEE. Inasmuch as Lessee has selected [illegible] the Equipment [illegible] and has agreed to assume all risk of loss resulting from [illegible] for any reason whatsoever (including force majeure), it is understood and agreed that Lessee irrevocably waives any claim against Lessor for any loss or [illegible] resulting from any cause, circumstance or event of whatsoever nature including but not limited to, failure of or delay in delivery, delivery to the wrong place, delivery of improper Equipment, [illegible] to the Equipment, defect or unfitness of the Equipment or the installation of the same, governmental regulation, Act of God, strike, embargo or any other cause, circumstances, whether of like [illegible] nature and, in connection therewith, Lessee agrees that any of the same shall not relieve Lessee of the obligations to pay rent or of any other obligation under this Lease. Lessor, Lessor's [illegible] or Lessor's assignee, shall have no obligation to install, erect, test, adjust or service the Equipment. Lessee shall, at its own cost and expense; (a) pay all charges and expenses in connection with [illegible] of all Equipment (b); comply with all laws, ordinances, regulations, requirements and rules with respect to the use, maintenance and operation of the Equipment; (c) make all repairs and [illegible] required to be made to maintain the Equipment in good condition, reasonable wear and tear excepted.

...stall the Equipment, Lessee agrees to take any and all such action, including without limiting the generality of the foregoing, alterations or modifications, structural or otherwise, as ... the Equipment shall be located. Lessee shall inspect the Equipment within eight (8) business days after its arrival at the address set forth above, and if in good working order and repair ... Lease the Equipment by executing and delivering to Lessor a dated notice of receipt in the form annexed hereto and labeled "Delivery Acceptance Receipt". Lessee hereby authorizes Lessor to ... a Lease the serial numbers of and other identification data of each item of Equipment as delivered. If, Lessee shall determine that the Equipment is not in good working order and repair ... such eight day period, shall deliver to Lessor a written notice specifying the defect or other objection to the Equipment and stating that it is rejecting the Equipment. In the event that Lessee gives ... notice referred to in the immediately preceding sentence, Lessee shall, on demand by Lessor, pay Lessor any amount theretofore paid or owing by Lessor in respect of the purchase of such ... In the event that Lessee has previously paid an amount in respect of the purchase of such Equipment, then the amount to be paid to Lessor shall include interest computed at the rate of ... per annum from the date of payment of such amount by Lessor to the date of payment by Lessee. Upon such payment Lessee shall be subrogated to Lessor's claim, if any, against the manufacturer ... or of the Equipment, provided that Lessee shall indemnify and save Lessor, Lessor's successor or Lessor's assignee, harmless from any and all loss, damage, cost, expense, including attorney's ... rority to the manufacturer or other supplier of the Equipment resulting, directly or in anyway indirectly, from the wrongful rejection of the Equipment or from failure to comply with the duties ... a merchant buyer by the Uniform Commercial Code, including without limitation, Section 2-601 thereof. However, if within such eight day period Lessee shall not have executed and delivered ... a Delivery Acceptance Receipt nor shall have given written notice to Lessor rejecting the Equipment, Lessee agrees that it shall be conclusively presumed, as between Lessor and Lessee, that ... as fully inspected the Equipment, that the Equipment is in full compliance with the terms of this Lease and in good condition and repair, and that Lessee is satisfied with and has accepted the ... If, for any reason whatsoever, the Equipment shall not have been delivered to Lessee at the address set forth above and accepted by Lessee in accordance with this Section 4 by the ... Presented Date of Delivery then Lessor shall have the option to cancel this Lease. If Lessor shall cancel this Lease, Lessee shall, on demand by Lessor, pay Lessor any amount theretofore paid ... to Lessor in respect of the purchase of such Equipment, in the event that Lessor has previously paid an amount in respect of the purchase of such equipment, then the amount to be paid to ... shall include interest computed at the rate of ... per annum from the date of payment of such amount by Lessor to the date of payment by Lessee. Upon such payment Lessee shall be subrogated to ... Lessor's claim, if any, against the manufacturer or other supplier of the Equipment, provided that Lessee shall indemnify and save Lessor, Lessor's successor or Lessor's assignee, harmless from ... all loss, damage, cost, expense, including attorney's fees, and liability to the manufacturer or other supplier of the Equipment.

5 CLAIMS AGAINST SUPPLIER. Lessor agrees to use its best efforts to obtain Supplier's agreement that all representations, warranties and agreements, if any, made by ... to Lessor or Lessee may be enforced by Lessor and/or Lessee jointly and severally; provided, however, that Lessee agrees that it shall make no claim against Supplier except upon taxes or ... notice to Lessor and provided, further, that Lessee shall not be permitted to exercise such right in the event that it shall be in breach of any of the terms, provisions or conditions ...

ADDITIONAL PROVISIONS ON THE REVERSE SIDE HEREOF ARE INCLUDED IN, AND MADE A PART OF, THIS LEASE. THIS NON-CANCELLABLE LEASE FOR THE TERM INDICATED ABOVE.

SUB-

...der(s) No. I

NAME OF LESSEE: Servicecenter, Inc.

X _____ Authorized Signature _____ Title

X _____ Authorized Signature _____ Title

X _____ Authorized Signature _____ Title

9/19/74

...Secretary-Treasurer

9. USE, MAINTENANCE AND REPAIR. The Lessee shall use the Equipment solely in the conduct of its business in a careful and proper manner and in compliance with all legal requirements [illegible] Lessee shall keep the Equipment in good repair, condition and working order and shall furnish any and all parts and labor necessary for that purpose but, at Lessor's request, Lessee shall, at [illegible] enter into a full maintenance contract with the Supplier or another contractor satisfactory to Lessor. All such contracts, parts and replacements for or which are added to or become attached to the Equipment [illegible] shall not cause the Equipment to be used without a valid maintenance contract. Lessee, at its expense, shall keep in full force and effect all licenses, permits, authorizations and approvals necessary for the ownership, operation and use of the Equipment. Lessee shall not make any alterations, additions or improvements to the Equipment without Lessor's prior written consent, unless such alterations, additions or improvements may be readily removed without damage to the Equipment. All additions to the Equipment, including without limitation, parts, mechanisms and devices installed thereon or affixed thereto, shall immediately become the property of Lessor, shall be deemed an accession to the Equipment and subject to the terms of this Lease. Lessee shall not remove any of the Equipment from the place where it is originally installed unless Lessee shall have given Lessor thirty (30) days prior written notice of the new location and unless such removal is approved in writing by Lessor. Lessee shall also pay, from time to time, [illegible] such parts and replacements as Lessor may deem necessary for the purpose of maintaining the existence, condition and proper maintenance of the Equipment.

10. INSURANCE. Lessee shall insure both Lessor and Lessee as their interests may appear and as named insureds with respect to liability, including without limitation, premises, automotive and employers' [illegible] bodily injury, death, damage to or loss of use of property resulting from the ownership, use and operation of the Equipment, with insurers satisfactory to Lessor, in amounts satisfactory to Lessor [illegible] and shall furnish Lessor with certificates evidencing the required coverage. Lessee shall also insure the Equipment, with insurers satisfactory to Lessor, for the full replacement value (new) thereof (without deduction for depreciation) against all risks of loss, theft, destruction or damage [illegible] and such other hazards as Lessor may reasonably require. Such insurance for loss, theft, destruction or damage to the Equipment shall provide that payments exceeding $[illegible] for any one loss shall be made to Lessor and not to Lessee and any other party. Lessee shall bear the risk of any loss, theft, destruction or damage to the Equipment not covered by insurance. Such insurance shall be maintained by Lessee at its own expense during the entire Lease Term and shall be delivered to Lessor and shall not be discontinued or terminated except upon thirty (30) days prior written notice of any alteration or cancellation of such policies. Such insurers shall further agree that said insurance as to Lessor and its assigns shall not be invalidated by any act, omission or breach of warranty by Lessee or any other party which might otherwise result in a forfeiture of said insurance and that said insurance shall be primary without any right of contribution from any other insurance carried by Lessor to the extent that such other insurance relates to the interest of Lessee hereunder. In the event of failure by Lessee to procure or maintain all of the above required insurance, Lessor shall have the right upon ten (10) days prior written notice to Lessee to effect such insurance, but the existence of such right shall not be deemed an obligation of Lessor nor shall the existence of such right be deemed a limitation of any rights of Lessor under Section 11 or elsewhere in this Lease any sums expended by Lessor in effecting such insurance, shall be deemed additional rent hereunder, payable with interest thereon at the rate of fifteen percent (15%) per annum, as additional rent in the month following its expenditure. The Lessor shall provide to the Lessee [illegible] policies that may be considered necessary by Lessor. The insurance shall be otherwise free of deductible except [illegible] Lessee hereby irrevocably appoints Lessor as Lessee's attorney-in-fact to make claim for, receive payment of, and execute and endorse all documents, checks or drafts received in payment for loss or damage under any such insurance policy and acknowledges that the power of attorney is coupled with an interest.

11. RISK OF LOSS OR DAMAGE. All risks of loss, theft, destruction and damage to the Equipment from whatever cause, are assumed by Lessee, who shall be responsible therefor throughout the [illegible] use. In the event of loss, theft, destruction or damage of any kind whatsoever from any and every cause whatsoever to any item or items or all of the Equipment, Lessee, at the option of Lessor, shall promptly at its [illegible] insurance and at its sole cost and expense:

(a) place the same in good repair, condition and working order; or

(b) replace the same with Equipment of the same make and model, satisfactory to Lessor, and in good repair, condition and working order; or

(c) if the Equipment or a material portion thereof is determined by Lessor to be lost, stolen, destroyed or damaged beyond repair, pay Lessor the applicable amount of all unpaid rentals payable hereunder the entire balance of the Casualty Value of the Equipment, as set forth in Schedule A hereto, and the Lease shall thereupon be deemed terminated. Lessor's obligations to perform under this section shall not be affected by Lessor's inability to obtain insurance proceeds for the loss, theft, destruction or damage to the Equipment.

Lessee shall be obligated to undertake, by litigation or otherwise, the collection of such proceeds or of any claim against any person for loss, theft, destruction or damage to the Equipment.

To the extent that Lessee shall have received any insurance proceeds on account of any loss, theft, destruction or damage to the Equipment and if Lessor, in its sole judgment, shall be satisfied that Lessee has properly performed all of its obligations undertaken by it under this Section 11, Lessor shall pay over to Lessee out of such proceeds the actual amounts expended by Lessee under subparagraphs (a), (b) or (c), as the case may be, of this section. In no event shall Lessor be required to pay Lessee an amount greater than the net amount of the insurance proceeds received by it.

The fact that all or damage to any of the Equipment shall impair any obligations of the Lessee under this Lease, including without limitation, the obligation to pay rent which shall continue in full force and effect until expiration of the Lease Term as provided in Section 4 of this Lease.

12. INDEMNITY. Lessee assumes all responsibility for the manufacture, selection, purchase, delivery, possession, use, condition, operation, maintenance, repair, testing and/or return of the Equipment, and agrees that during the entire term, the liability, if any, for personal injuries and property damage howsoever arising from or incidental thereto, whether such injuries be to agents or employees of Lessee or to third parties and whether to the property of Lessee or of others, Lessee will indemnify and save Lessor, Lessor's successor and Lessor's assignee and their agents, servants, successors and assigns, harmless of, from and against all claims, actions and suits (including reasonable fees of attorneys and accountants) liabilities, losses and damages resulting directly or in any way indirectly from or pertaining to the Equipment or the manufacture, selection, purchase, delivery, possession, use, operation, maintenance, repair, testing and/or return thereof and the property covered by any other insurance [illegible] Lessee shall maintain.

13. SECURITY DEPOSIT. Simultaneously with the execution of this Lease, Lessee is depositing with Lessor, in addition to an amount at least equal to the first installment [illegible] as specified in Section 4 hereof, the sum specified on the front of this Lease under the caption "Amount of Security Deposit", which sum shall be retained by Lessor as security for the payment and performance of Lessee's [illegible] under this Lease. Shall in the event Lessee defaults in respect of any of the terms, provisions and conditions of this Lease, including, but not limited to, the payment of rent and additional rent, Lessor, without [illegible] any of its rights or, may use, apply or retain the whole or any part of the security so deposited to the extent required for the performance of any obligations as to which Lessee is in default and, in any such instances, Lessee shall on demand pay to Lessor such sum as Lessor may at all times be secured by the full amount specified on the front of this Lease. In the event that Lessee shall fully and faithfully comply with all of the terms, provisions, covenants and conditions of this Lease, the security shall be returned to Lessee after the date fixed as the end of this Lease and after surrender of the Equipment in accordance with Section 19 hereof. In the event of an assignment of the Lessor, Lessor shall have the right to transfer the security to its assignee and Lessor shall thereupon be released by Lessee from all liability for the return of such security; and it is agreed that the provisions hereof shall apply to every assignment made of the security to a new assignee. Lessee covenants that it will not assign or encumber or attempt to assign or encumber the monies deposited herein as security and that neither Lessor nor its assigns shall be bound by any such assignment, encumbrance, attempted assignment or attempted encumbrance.

14. TAXES. Lessee shall pay all costs, expenses, fees and charges incurred in connection with the use and operation of the Equipment during the Lease term hereunder. Lessee shall pay any and all sales, use, [illegible] stamp, documentary, personal property and other taxes, and declare, report and pay all assessments and other governmental charges whatsoever by whomsoever payable on or relating to the Equipment and the purchase, [illegible] use or operation thereof (other than federal or state income tax payable by Lessor) as and when the same shall become due and payable. In addition, Lessee shall keep the Equipment free and clear of all levies, liens [illegible] taxes. Lessee shall have no obligation to dispute or contest the imposition or collection or the basis of computation of any such tax or other governmental charge payable by Lessee.

15. COLLECTION COSTS. If any of the installments of rents and amounts of additional rent provided for herein are not paid within (10) days after such installments shall be due, Lessee agrees to pay, at Lessor's option, in addition to any and all other remedies provided in this Lease or available at law or in equity, as and for Lessor's costs of collection, interest at the rate of 15% per annum on all sums not paid. The exercise by Lessor of the rights granted to it under this Section 15 shall not be deemed a waiver of any of the rights and/or remedies otherwise granted to it under this Lease, including, without limitation, the right to it under Section 17 hereof, to declare the Lessee in default.

16. ASSIGNMENT; SUBLEASE.

16.1 BY LESSEE. Lessee shall not assign, transfer, pledge or otherwise dispose of this Lease or its interest hereunder nor enter into any sublease, lend any of the Equipment, or permit it to be used by anyone other than Lessee or its authorized employees without the prior written consent of Lessor.

16.2 BY LESSOR. Lessee acknowledges notice of Lessor's intention to assign Lessor's interest in this Lease, and Lessee agrees that Lessor may assign this Lease and/or mortgage the Equipment, in whole or in part. Upon receiving notice to Lessee but upon receiving any notice thereof Lessee shall promptly acknowledge receipt thereof in writing. Each such assignee and/or mortgagee shall have all of the rights, but none of the obligations of Lessor hereunder, to the extent the obligation to continue to keep the Equipment subject to this Lease in accordance with the terms and conditions hereof. Lessee agrees that it shall not assert against any assignee or mortgagee of Lessor any defense, setoff, recoupment, claim or counterclaim that Lessee may have against Lessor and Lessee shall remain liable for its obligations hereunder in spite of any such assignment or mortgage. Lessor's assignee or mortgagee may assign the Lease or mortgage, as the case may be, under the same terms and conditions. Upon any assignment of reassignment of this Lease by Lessor or Lessor's successors in interest, as the case may be, Lessee shall, upon request of Lessor or any of its successors in interest, as the case may be, execute, acknowledge and deliver a statement in writing certifying that this Lease is unmodified and in full force and effect (or if there have been modifications, that the same is in full force and effect as modified and stating the modifications), and the dates to which the rents and other charges have been paid in advance, and if there are any defaults claimed by Lessee. Such statement shall be delivered by Lessee to make all future payments of rents and other charges under the Lease directly to Lessor or Lessor's successor in interest, as the case may be.

17. DEFAULT. If Lessee shall default in the payment of any sums to be paid hereunder and such default shall continue for more than ten (10) days after Lessor has given notice thereof (except that Lessee shall be entitled to notice of default in the case of non-payment or late payment of rent), or if Lessee has breached any other provision of this Lease, or if a petition in bankruptcy or for reorganization or for the appointment of a trustee of any part of the property of Lessee; or any other proceedings for the relief of debtors shall be filed by or against Lessee or if Lessee shall make a general assignment for the benefit of creditors, or shall admit any act amounting to business failure, or if an attachment shall be levied or a tax lien filed against any of Lessee's property, or if Lessee shall make a voluntary or involuntary assignment or transfer of all or any part of its property, or an unauthorized assignment of its interest hereunder, or if Lessee, in Lessor's sole opinion, shall undergo any material change as to increase Lessor's risk, including any contingency [illegible] listed by the terms of this Lease, then in any of such events, Lessor, at its option, may declare the Lessee to be in default, in which case Lessor shall have the right to exercise any one or more of the following remedies:

(a) Lessor may recover from Lessee as immediately due and payable the entire amount of unpaid rentals for the balance of the term of this Lease, together with any and all other charges which may be then or which by [illegible] payable, including without limitation, costs of collection and attorneys' fees (not to exceed 20% of the amount collected);

(b) Lessor may terminate this Lease and/or within thirty (30) days thereof, demand a return of the Equipment to the destination specified by Lessor, freight prepaid by Lessee;

(c) Lessor, without demand, or notice to or consent of Lessee, and without any court order or other process of law, may take possession of any or all items of Equipment, wherever the Equipment may be located for such purpose entering upon any premises owned or leased by Lessee without liability for any damages occasioned by such taking possession. Lessor may thereafter hold the Equipment free and clear of this Lease and of any rights of Lessee. The return or retaking of the Equipment shall not constitute termination of the Lease. Lessor may sell all or any part of the Equipment free and clear of any claims of Lessee at private sale or sales, upon ten (10) days written notice to Lessee, at such price or prices and upon such terms as Lessor may elect, or at public sale or sales at which Lessor may bid for and purchase any or all of the Equipment. Lessor shall also have the right to lease any of the Equipment free and clear of any claims of Lessee, upon ten (10) days prior written notice to Lessee, at such rental or rentals and upon such terms and conditions as Lessor may elect. Lessee agrees that purchasers and lessees of the Equipment shall have the right to enter upon Lessee's premises to inspect such Equipment and that Lessor may conduct its sales and/or leasing transactions on Lessee's premises. The net proceeds of any such sale or sales and/or the net rentals received under any new leasings, less 5% of the Total Cost of the Equipment as the case may be, shall be applied (i) first to the payment of all costs and expenses of every kind incurred in connection with or incidental to the holding, preparing for sale or lease and the selling or leasing of the Equipment, including attorney's fees, (not to exceed 20% of the amount collected) and then (ii) to the rentals for the entire term provided for herein and then remaining unpaid. The Lessee shall remain liable to the Lessor for the payment of any deficiencies, together with interest thereon computed at the rate of fifteen percent (15%) per annum. The surplus, if any, shall be liquidated damages for the breach of this agreement and shall be payable to Lessor.

(d) Lessor may pursue any other remedy at law or in equity.

as to such item or items of Equipment with respect to which Lessor elects to terminate this Lease, this Lease shall continue in full force and effect and Lessee shall be bound to continue to pay and perform its ... Any repossession or resale of any item of Equipment shall not bar an action for a deficiency as above provided, and the bringing of an action for the entry of judgment against the Lessee shall not bar the Lessor's ... any or all items of Equipment.

20 II. **OPTION TO RENEW.** Lessee shall have the option to renew this Lease with respect to the Equipment as an entirety for such additional term, if any, and for such rental as is specified on the ... provided that such option shall be exercisable only upon Lessee's giving written notice to Lessor of Lessee's intent to to renew. Lessee's renewal notice shall be given during the third month preceding the expiration ... term of this Lease and shall be accompanied by Lessee's check in an amount equal to the aggregate rentals payable by Lessee during the first year of the renewal period.

20 III. **SURRENDER.** At the expiration of this Lease or upon demand by Lessor made pursuant to paragraph (3) of Section 17 hereof, or upon the termination of this Lease in any manner whatever, Lessee ... assemble and ship the same to the destination specified by Lessor and by such carrier as Lessor shall designate. Lessee shall return the Equipment in good operating order and repair. Any and all transportation ... of the returning of the Equipment as aforesaid shall be borne by the Lessee. Transportation costs shall be deemed to include insurance for the full replacement value of the Equipment without consideration for depreciation.

20 IV. **MISCELLANEOUS.**

20.1. **REMEDIES CUMULATIVE.** Lessor may pursue any remedy available to it at law or in equity. Each and every right and remedy hereby specifically given to Lessor may be exercised from time to time ... and as often and in such order as may be deemed expedient by Lessor. All such rights and remedies shall be cumulative and the exercise of one shall not be deemed a waiver of the right to exercise any other ... or omission by Lessor in the exercise of any such power or remedy and no renewal or extension of any payments due hereunder shall impair any such power or remedy or shall be construed to be a waiver of any ... default thereto.

20.2. **NON-CANCELLABILITY.** The Lease hereunder shall continue in full force and effect and be non-cancellable, except in accordance with its terms for the rental term herein provided.

20.3 **LESSOR'S RIGHT TO CURE DEFAULTS.** In the event of failure of Lessee to pay any costs, expenses, fees, charges or taxes (as provided in Section 16 above) or to procure or maintain ... Section 19 above), or failure to pay or perform any other obligation hereunder, Lessor shall have the right, but shall not be obligated, upon ten (10) days prior notice to Lessee to act in Lessee's place and stead ... Lessor shall repay Lessor the cost thereof with the next payment of rent as additional rent together with interest (at the rate of 15% per annum) from the date of any such payment by Lessor. The exercise by ... granted to it under this subsection shall not be deemed a waiver of any of the rights and/or remedies otherwise granted to it under this Lease, including, without limitation, the right, granted to it under Section ... and the Lessee in default.

20.4 **ENTIRE AGREEMENT.** This Lease, together with the schedule attached hereto, if any, constitutes the entire agreement between the parties hereto, and can only be modified by further agreement ... of by such said parties. No representations, warranties or agreements, oral or written, expressed or implied have been made by either party hereto with respect to the Lease hereunder or to the Equipment covered ... hereby's provided herein.

20.5 **COOPERATION.** Lessee shall provide Lessor with such corporate resolutions, opinions of counsel, certificates and other documents as Lessor may reasonably request from time to time. Lessee shall execute ... all documents, including without limitation, financing and continuation statements under the Uniform Commercial Code as Lessor shall require for filing or recording this Lease or for effecting a pledge or assignment ... the Secretary of State of the state of incorporation or residence of Lessee, the Secretary of State of the state in which Lessee's principal office is located if different from the state of incorporation or residence ... the County Clerk of the county in which the Equipment leased hereunder is located and used and such other places as Lessor shall deem necessary or desirable. Lessee is hereby authorized to file any such statements ... pledge of Lessee or any of its subsidiaries. Whenever requested by its assignee, or a third party, Lessor will join with Lessee in executing financing statements pursuant to the Uniform Commercial Code.

20.6 **AGREEMENT AS LEASE; VENUE; SERVICE OF PROCESS.** IT IS HEREBY STIPULATED BY AND BETWEEN LESSOR AND LESSEE THAT THIS AGREEMENT SHALL BE ... IT IS FURTHER STIPULATED THAT SUCH LEASE WAS MADE IN NEW YORK COUNTY, NEW YORK, REGARDLESS OF THE ORDER IN WHICH THE SIGNATURES OF THE PARTIES SHALL BE AFFIXED ... AND SAID LEASE SHALL BE INTERPRETED AND THE RIGHTS AND LIABILITIES OF THE PARTIES DETERMINED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK. AS PART OF THE CONSIDERATION FOR ... LESSOR ENTERING THIS LEASE, LESSEE HEREBY AGREES THAT ALL ACTIONS OR PROCEEDINGS ARISING, DIRECTLY OR INDIRECTLY, FROM THIS LEASE SHALL BE LITIGATED ONLY IN COURTS LOCATED ... WITHIN THE STATE OF NEW YORK, AND LESSEE HEREBY CONSENTS TO THE JURISDICTION OF ANY COURT LOCATED WITHIN THE STATE OF NEW YORK, AND WAIVES REMOVAL SERVICE OF ANY AND ALL PROCESS ... HEREIN. LESSEE CONSENTS THAT ALL SUCH SERVICE OF PROCESS MAY BE MADE BY CERTIFIED OR REGISTERED MAIL, RETURN RECEIPT REQUESTED, DIRECTED TO LESSEE AT THE ADDRESS HEREIN ... AND SERVICE SO MADE SHALL BE COMPLETE FIVE (5) DAYS AFTER THE SAME HAS BEEN POSTED AS AFORESAID.

20.7 **TAX TREATMENT.** No representation is, or has been, made as to the treatment for income tax purposes of payments hereunder, it being understood that whether a particular agreement is to be treated ... for tax purposes as a Lease or some other form and circumstances in each case.

20.8 **COUNTERPARTS AND RECORDING.** This Lease may be executed in any number of separate counterparts, each counterpart constituting an original. The parties are to execute, acknowledge ... and deliver such amendments of this agreement as may be required at any time in order to comply with the provisions of any applicable law requiring the recording or filing of this agreement or a copy hereof in any public ... office in any state or any political or governmental subdivision of any state. Lessee agrees to pay the fees and charges imposed by law for such mandatory recording or filing and the necessary expenses of the ... Lessor incurred in so recording or filing.

20.9 **FAILURE TO DISTINGUISH AS EXTENSION.** If, upon the expiration of the full term of this Lease as above provided for, Lessee does not immediately return the Equipment to Lessor ... as required, then the Equipment shall continue to be held and leased under and in accordance with the conditions in this agreement contained, and this agreement shall thereupon be extended until such time as the Lessee or Lessor shall thirty (30) days notice in writing to the other may terminate it, whereupon Lessee shall forthwith deliver the equipment to Lessor.

20.10 **NO ASSIGNMENT.** The section headings contained herein have been inserted as a matter of convenience only and shall not be deemed to affect the interpretation of the text.

20.11 **SEVERABILITY.** If a portion or part of any section herein provided for shall be invalid under any applicable law, such provision shall be inapplicable and deemed omitted, but the same shall not ... affect the remainder of such section or the remaining sections thereof.

... All notices and other communications hereunder shall be in writing and shall be deemed to be duly given ... when delivered personally or by facsimile delivery or by first class mail, postage prepaid. All notices and other communications hereunder shall be addressed ... as follows:

... In the event that the rate of interest or any other payments hereunder by either party to the other shall exceed the legal amount so payable, then the interest to be paid shall be computed ...

... Neither this Lease nor any modification hereto, oral or written, shall be deemed binding upon Lessor unless executed by Lessor's ...

RIDER NUMBER 1 TO SUBLEASE AGREEMENT NO. 057/82/000 126/3 BETWEEN INTERMODAL SYSTEMS LEASING, INC., SUBLESSOR AND SERVICE INTER, INC., SUBLESSEE

The printed part of this Sublease is hereby amended, modified and supplemented as follows: To the extent that the printed part of the Sublease and this Rider are compatible, each shall be deemed in addition to and in expansion of, the other. Wherever there is any conflict between this Rider and the printed part of this Sublease, the provisions of this Rider are paramount and the Sublease shall be construed accordingly.

1. For purposes of this Sublease only, and without in any way changing any of the terms, provisions, conditions and covenants in the printed part of this Sublease or this Rider, all references in the printed part of this Sublease to "Lessor" shall mean "Sublessor", all references to "Lease" shall mean "Sublease" and all references to "Lessee" shall mean "Sublessee".

2. This Sublease, and the rights of Sublessor and Sublessee hereunder, shall be subordinate in all respects to an Agreement of Lease No. 057/82/000 126/0 (the "Prime Lease") between Locafrance U. S. Corporation, with a place of business at 919 Third Avenue, New York, New York ("Locafrance") as lessor, and Sublessor as lessee, and to the rights of Locafrance thereunder.

3. Sublessee hereby acknowledges Sublessor's right to assign its interests under this Sublease to Locafrance, and that it shall do so and consents to such assignment, and in consideration of this Sublease, the Sublessee agrees that its obligation to pay directly to Locafrance the amounts (whether designated as rentals or otherwise) which become due as set forth in the Sublease shall be absolutely unconditional, and it promises so to pay the same to Locafrance at its address hereinbefore stated, notwithstanding any defense, set-off or counterclaim whatsoever, whether by reason of breach of the Sublease or otherwise, which it may or might now or hereafter have as against the Sublessor (the Sublessee reserving its right to have recourse directly against the Sublessor on account of any such defense, set-off or counterclaim).

4. Sublessor and Sublessee each recognize and agree that Locafrance is the owner of the Equipment and the Equipment shall at all times remain the property of Locafrance, and that neither Sublessor or Sublessee has any right, title, interest or equity in the Equipment whatsoever except as may be set forth in the Prime Lease and Sublease. Sublessee shall at all times protect and defend, at its own cost and expense, the title of Locafrance from and against all claims, liens and legal process of creditors of Sublessee and Sublessor, and keep all the Equipment free and clear from all such claims, liens and process. The Equipment is, and shall at all times remain, personal property irrespective of the way it may be affixed to the realty, and Sublessee shall maintain each item of Equipment so that it may be removed from any building in which it is placed

of the premises in which the Equipment is kept and will obtain the agreement thereto by all such landlords and mortgagees. If at any time during the term hereof Locafrance supplies Sublessee with labels, plates or other markings stating that the Equipment is owned by Locafrance, Sublessee shall affix and keep the same upon a prominent place on each and every item comprising the Equipment.

5. Any default by Sublessor under the Prime Lease shall be construed to be a default by Sublessee under this Sublease thereby entitling Locafrance to exercise and to avail itself of all of its rights and remedies under the Prime Lease; provided, however, if Sublessee is not then in default under this Sublease, Sublessee may, if Locafrance consents in writing, continue to have the quiet use and enjoyment of the Equipment on such terms and conditions, including the payment of rentals, as may be satisfactory to Locafrance.

6. Notwithstanding the sublease of the Equipment under this Sublease, it is understood and agreed that Sublessor shall be and remain primarily and not secondarily liable to Locafrance for the full and prompt payment and performance by Sublessor of all of its obligations, accrued and executory, under the Prime Lease.

INTERMODAL SYSTEMS LEASING, INC.

By _____

Sublessee: SERVICECENTER, INC.

By _____

Optional Purchase Option Provision

Provided that all lease rental payments and all other payments required to be made under the Sublease have been made by Sublessee, and Sublessee has not been and is not then, in default under the terms of the Sublease, or if Sublesse has been, or is, in default under the terms of this Sublease such default has been cured, or waived by Sublessor and Locafrance, at the expiration of the base term of this Sublease, Sublessee shall have the option to purchase all of Sublessor's right, title and interest in the Equipment at a purchase price equal to the then fair market value of the Equipment determined by an independent appraiser selected by Locafrance. The cost of such appraisal shall be borne by Sublessee. The option shall be exercised by Sublessee giving written notice to Locafrance and to Sublessor that it is exercising the option granted herein, which notice shall state the date this Sublease expires. On such date the option price shall be due and payable by Sublessee to Sublessor, upon receipt of which Sublessor shall deliver to Sublessee a Bill of Sale transferring all of Sublessor's right, title and interest in the Equipment to Sublessee.

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LOCAFRANCE U.S. CORPORATION,

Plaintiff

against

TRANS STATE DISTRIBUTION, INC. and RIGG WAREHOUSING,

Defendant

Plaintiff designates New York 26 3/4/76 County as the place of trial

The basis of the venue is CAUSE OF ACTION AROSE IN NEW YORK COUNTY

Summons

Plaintiff resides at 20 Woodsbridge Road Katonah, New York 10536

County of

To the above named Defendant TRANS STATE DISTRIBUTION, INC. and RIGG WAREHOUSING

You are hereby summoned to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance, on the Plaintiff's Attorney(s) within 20 days after the service of this summons, exclusive of the day of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Dated, October 27, 1975

Defendant's Address: 78-90 Air Port Highway Pennsauken, New Jersey

FILED NEW YORK CLERK'S OFFICE NOV 10 1975

REGAN GOLDFARB HELLER WETZLER & QUINN
Attorney(s) for Plaintiff

Office and Post Office Address
445 Park Avenue
New York, New York 10022

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

LOCAFRANCE U.S. CORPORATION,

Plaintiff,

-against-

TRANS STATE DISTRIBUTION, INC., and RIGG WAREHOUSING,

Defendants.

COMPLAINT

Index No. 20384

Plaintiff, by its attorneys, REGAN GOLDFARB HELLER WETZLER & QUINN, complaining of Defendants, alleges as follows:

1. Plaintiff is a Corporation organized and existing under and by virtue of the laws of the State of Delaware having at all relevant times herein maintained its principal place of business at 919 Third Avenue, in the City, County and State of New York and now maintaining an office at 20 Woodsbridge Road, Katonah, New York.

2. Upon information and belief, Defendant TRANS STATE DISTRIBUTION, INC. ("TRANS STATE") is a corporation organized and existing under and by virtue of the laws of the State of New Jersey with offices at 8301 National Highway, Pennsauken, New Jersey.

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NEW YORK

THE ADDITIONAL PROVISIONS ON THE REVERSE SIDE HEREOF ARE INCLUDED IN, AND MADE A PART OF, THIS LEASE. THIS IS A NON-CANCELLABLE LEASE FOR THE TERM INDICATED ABOVE

3. Upon information and belief, Defendant RIGG WAREHOUSING ("RIGG") is a corporation organized and existing under and by virtue of the laws of the State of New Jersey with offices at 78-90 Air Port Highway, Pennsauken, New Jersey and is the successor in interest to TRANS STATE.

4. On or about August 15, 1974, Plaintiff and TRANS STATE entered into a written agreement (a copy of which is annexed hereto as Exhibit "A") whereby Plaintiff leased to TRANS STATE the equipment described in the said written agreement.

5. Pursuant to the aforesaid written agreement TRANS STATE obligated itself to pay to Plaintiff monthly payments of $602.55 for a period of thirty-six (36) months, commencing on or about August 15, 1974.

6. Although Plaintiff has in all respects performed its obligations under the said written agreement, TRANS STATE and RIGGS have failed and refused to pay Plaintiff the monthly rental payments due and owing under the said written agreement since in or about March, 1975 thereby placing said Defendants in default under Section "17" thereof.

7. TRANS STATE and RIGGS have been advised of, but have not cured, the aforesaid defaults and continue to refuse to make the aforesaid monthly rental payments.

THE ADDITIONAL PROVISIONS ON THE REVERSE SIDE HEREOF ARE INCLUDED IN, AND MADE A PART OF, THIS LEASE. TH
IS A NON-CANCELLABLE LEASE FOR THE TERM INDICATED ABOVE

8. By reason of the foregoing, there is now due and owing to the Plaintiff from Defendants the sum of $18,679.05.

WHEREFORE, Plaintiff demands judgment against Defendants in the sum of $18,679.05 together with interest thereon from March 15, 1975, the costs and disbursements of this action and for such other and further relief as the Court may deem just and proper.

Dated: New York, New York
October 27, 1975

Yours, etc.

REGAN GOLDFARB HELLER WETZLER
& QUINN
ATTORNEYS FOR PLAINTIFF
445 Park Avenue
New York, New York 10022
(212) 754-3000

DEFENDANTS MEMORANDUM OF LAW (Filed September 8, 1976)

(pp. 307a-327a)

POINT I

WHETHER IT IS CALLED AN ACCORD AND SATISFACTION OR A LIQUIDATED DAMAGES AGREEMENT, THE AGREEMENT OF JUNE 18, 1974, BARS THE PLAINTIFF'S ACTION.

The ingenuity of plaintiff has devised an unusual euphemism for the settlement agreement. However, plaintiff is inconsistent in claiming, first, that the agreement is an unexecuted accord and, second, that the agreement is really a liquidated damages agreement. The common understanding of a liquidated damages agreement is an agreement in advance to fix the amount that should be paid in the event of the failure of a party to perform a contract. Moreover, plaintiff has not cited any cases which hold that the failure to perform a liquidated damages agreement operates to make damages unliquidated once again.

The agreement of June 18, 1974, speaks for itself and the court can determine the meaning of the agreement as a matter of law. What plaintiff conveniently neglects to mention is that, upon execution of the settlement agreement, plaintiff gave INTERMODAL SYSTEMS LEASING, INC. ("ISLI") a release (Exhibit C attached to Affidavit of DAVID C. RAIBLE)

which states:

> Locafrance U.S. Corporation . . . for good and valuable consideration received from Intermodal Systems Leasing, Inc. the receipt and sufficiency whereof is hereby acknowledged, has remised, released and forever discharged, and does for itself and its successors remise, release and forever discharge the said Intermodal Systems Leasing, Inc. . . . from all manner of actions, causes of action, suits, debts, dues, sums of money, accounts, reckoning, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, trepasses, damages, judgments, extents, executions, claims and demands whatsoever, in law, in admiralty, or in equity, which against Intermodal Systems Leasing, Inc. it ever had, now has, or . . . may have . . . from the beginning of the world to the day of the date of these presents.

The fact that LOCAFRANCE U.S. CORPORATION ("LOCAFRANCE") gave ISLI a release proves that LOCAFRANCE intended to extinguish whatever rights or causes of action it may have had in the past and to substitute for these the settlement agreement of June 18, 1974. Similarly, if the agreement were a liquidated damages agreement, LOCAFRANCE expressly extinguished its rights to sue for any unliquidated claims and agreed to substitute the liquidated claim set forth in the agreement of June 18, 1974.

The plaintiff emphasizes (Plaintiff's Memorandum at p.12) a quotation from American Broadcasting- Paramount Theatres, Inc. v. American Mfrs. Mutual Insurance Co.

48 Misc. 2d 397, 265 N.Y.S. 2d 76 (N.Y. Sup., 1965) where the court states:

> But, even if the Board had accepted the offer, that would have been only an executory accord, defined as an agreement embodying a promise to accept at some future time a stipulated performance in satisfaction of a present claim or obligation and a corresponding promise to render such performance in satisfaction of such claim or obligation. [citations omitted]. And, then, if Kemper had subsequently failed to perform the accord, according to its terms, ABC would have had the choice of suing on the accord or the original obligation. . .

As is indicated by the affidavit of IRWIN M. ECHTMAN, the plaintiff has brought suit in the courts of New York based upon the settlement agreement. (See Exhibits C and D annexed to Affidavit of IRWIN M. ECHTMAN) Hence, plaintiff "had the choice of suing on the accord or the original obligation" and plaintiff made his choice.

In New York, the doctrine of election of remedies "will not permit suitors solemnly to affirm that a given state of facts exists from which they are entitled to a particular relief and afterward affirm that a contrary state of facts exists from which they are entitled to inconsistent relief". Tate v. Estate of Dickens 276 App. Div. 94, 93 N.Y.S. 2d 504,507(3d Dep., 1949); Garlock v. Friedman 282 App. Div.

729, 122 N.Y.S. 2d 406 (2d Dep., 1953). While the rule has been limited by CPLR §3002 which allows the pleading of inconsistent causes of action, the doctrine remains viable in circumstances where, as here, the plaintiff has already made an election releasing the defendant's liability. See Martin v. C.A. Productions Company 8 N.Y. 2d 226, 203 N.Y.S. 2d 845 (1960); Estupian v. Cleanerama Drive-In Cleaners, Inc. 38 A.D. 2d 353, 329 N.Y.S. 2d 448 (2d Dep., 1972); International Fireproof Door Co. v. Acme Builders 69 Misc. 2d 299, 329 N.Y.S. 2d 652 (N.Y. Sup., 1972); Mercury Record Corp. v. Glazer 29 Misc. 2d 567, 213 N.Y.S. 2d 231, (N.Y. Sup., 1961). Plaintiff cannot "approbate and reprobate". Tate v. Estate of Dickens 276 App. Div. 94, 93 N.Y.S. 2d 504, 507.

Accepting, arguendo, plaintiff's characterization of the settlement agreement as a "liquidated damages agreement," one notes that the mere breach of this agreement, as alleged by plaintiff, will not operate to revive plaintiff's un-liquidated claim. As In re Rosenberg's Estate 36 Misc. 2d 439, 233 N.Y.S. 2d 39 (N.Y. Surr., 1962) observes, "it has long been established that 'When the parties by their contract provide for the consequences of a breach of

contract, lay down a rule to admeasure the damages, and agree when they are to be paid, the remedy thus provided must be exclusively followed'. [citations omitted]"

In Frankell Carpet Fashions, Inc. v. Abraham 228 N.Y.S. 2d 123 (Nassau Co. Ct., 1962), the court rejected an argument by the landlord which would permit him to assert a claim for actual damages while retaining funds under a liquidated damages agreement. The court declared, "The landlord may not in one breath claim liquidated damages and then seek actual damages in addition to liquidated damages [citations omitted]" 228 N.Y.S. 2d 123,126. When a plaintiff brings an action on a liquidated damages agreement, and then later brings an action not only on the same liquidated damages agreement, but upon the prior unliquidated claim as well, dismissal of the complaint is appropriate. New York Dock v. City of New York 246 App. Div. 620, 283 N.Y.S. 2 (2d Dep., 1935). See also Martin v. C.A. Productions Company 8 N.Y. 2d 226, 203 N.Y.S. 2d 845 (1960); Estupian v. Cleanerama Drive-In Cleaners, Inc., 38 A.D. 2d 353, 329 N.Y.S. 2d 448 (2d Dep., 1972).

POINT II

THE CLAIM OF THE PLAINTIFF IS BARRED BY A RELEASE.

It is noteworthy that the plaintiff does not deny the existence or validity of the release annexed as Exhibit C to the Affidavit of DAVID RAIBLE. Although plaintiff does allege that the Illinois action "had nothing to do with the issues presently involved." (Affidavit of PAUL W. SIEGE at p. 4), the court may examine the pleadings of the Illinois action to ascertain whether any similarity exists. (Exhibit A annexed to Affidavit of IRWIN M. ECHTMAN.)

In any event, the similarity or dissimilarity of the Illinois action does not bear on the validity of the release executed by plaintiff. The release provides that it extinguishes "all...claims and demands whatsoever... from the beginning of the world to the day of the date of these presents." In the face of this grandiose recital, LOCAFRANCE can hardly complain that it "did not truly focus on this aspect." (Affidavit of PAUL W. SEIGE at p. 5).

Parenthetically, defendants maintain that the release is to be governed by Illinois law because it was given pursuant to an action in the Illinois courts and because Illinois possesses the most significant contacts with the release. Except for the fact that the settlement agreement provides that it will be construed in accordance with New York law, the settlement agreement would have also been governed by Illinois law. The release does not contain a choice of law provision; and consequently Illinois law applies.

Plaintiff states that the settlement and release herein violates §29 of the Securities and Exchange Act (15 U.S.C. §78 cc). (Plaintiff's memorandum at p. 14, footnote) This section of the Act provides in part: "Any condition, stipulation, or provision binding any person to waive compliance with any provision of this title or of any rule or regulation thereunder, or of any rule of an exchange required thereby shall be void." The provision in question was designed to prohibit exculpatory clauses in brokerage contracts and by no means makes it impossible to settle controversies involving alleged violations of the securities laws. Korn v. Franchard

Corporation 388 F. Supp. 1326 (D.C. S.D. N.Y., 1975); Mittendorf v. J.R. Williston & Beane Incorporated 372 F. Supp. 821 (D.C. S.D. N.Y., 1974). See also Moran v. Paine, Webber, Jackson & Curtis 389 F 2d 242 (3d Cir., 1968); Moran v. Paine, Webber, Jackson & Curtis 422 Pa. 66, 220 & 2d 624 (1966).

POINT III

PLAINTIFF DOES NOT DISPUTE THE FACT THAT NEITHER JOHN OVERMYER, ELIZABETH OVERMYER, OR EDWARD OVERMYER IS A CONTROLLING PERSON.

The affidavit of DANIEL H. OVERMYER in support of the motion to dismiss reveals the fact that defendants JOHN OVERMYER and EDWARD OVERMYER are minors, of the ages of 14 and 12 respectively, residing with their parents, DANIEL H. OVERMYER and SHIRLEY OVERMYER. ELIZABETH OVERMYER is the daughter of DANIEL OVERMYER and SHIRLEY OVERMYER, but she resides outside the State of New York. DANIEL H. OVERMYER unequivocally states under oath that neither JOHN OVERMYER, EDWARD OVERMYER or ELIZABETH OVERMYER is a controlling person, and he proceeds to set forth in detail the facts that justify this statement.

The affidavit of PAUL W. SEIGE submitted in opposition to defendants' motion to dismiss does not contain a single reference to JOHN OVERMYER, EDWARD OVERMYER or ELIZABETH OVERMYER. In fact, these parties were joined by the plaintiff for the sole purpose of harassing and oppressing defendants DANIEL H. OVERMYER and SHIRLEY OVERMYER, their parents, and consequently, dismissal of the complaint as to JOHN OVERMYER, EDWARD OVERMYER and ELIZABETH

OVERMYER, is proper. Applegate v. Top Associates, Inc. 425 F 2d 92 (2d Cir., 1970).

POINT IV

IN VIEW OF THE ABSENCE OF A COMMON-LAW OR STATUTORY RIGHT TO SUE A PARTY BY A FICTITIOUS NAME, PLAINTIFF'S "JOHN DOE" COMPLAINT SHOULD NOT BE PERMITTED.

Plaintiff has stated that, "The cases cited by Defendants purportedly in support of their argument uniformly deal with problems of diversity of citizenship." (Plaintiff's memorandum at p. 80) An examination of the cases cited by defendants indicates that plaintiff's statement is completely erroneous. In Sigurdson v. Del Guercio 241 F 2d 480 (9th Cir., 1956), which is quoted by defendants, federal jurisdiction was sustained under the Administrative Procedure Act. Craig v. United States 413 F. 2d 854 (9th Cir., 1969) cert den. 396 U.S. 987 was an action based upon the Death on the High Seas Act. National Nut Co. v. Kelling Nut Co. 61 F. Supp. 76 (DC ND Ill, 1945) involved an action for patent infringement.

In Wilder v. Doe 30 F. Supp. 869 (D.C., E.D. Pa., 1939) aff 109 F. 2d 1023 (3d Cir., 1940), plaintiff's suit under the Federal Declaratory Judgment Act was dismissed based on the principle, audi alteram partem. Tolefree v. Ritz 382 F. 2d 566 (9th Cir., 1967)was an action under the Civil Rights Act. And Mississippi Valley Barge Line Co.

v. Bulk Carriers, Ltd. 249 F. Supp. 743 (D.C. S.D. N.Y., 1915) involved an admiralty suit.

In contrast, the cases cited by the plaintiff are clearly distinguishable. In the cases of Engleman v. Cahn 425 F. 2d 954 (2d Cir, 1969), Jos. Muller Corp. Zuro v. Societe An. Deger Et D'Arm 508 F. 2d 814 (1914) and Blouin v. Dembitz 489 F. 2d 488 (1973) the complaints were dismissed on other grounds. Therefore it was unnecessary for the court to consider whether or not the John Doe defendants were properly joined under federal procedure. Both in Kern v. Hettinger 303 F. 2d 333 (2d Cir., 1962) and in State of New York v. White 528 F. 2d 336 (1975), the opinion of the court fails to show that any objection was made to the use of the "John Doe" designation. Moreover, State of New York v. White involved an action to remove a cloud on the title of New York State to vast tracts of land claimed by the Mohawk Indians, and thus the names of the particular parties were only of marginal relevance to the central issue presented.

Furthermore, plaintiff's reliance on Lowenstein v. Rooney 401 F. Supp. 952 (E.D. N.Y., 1975) is misplaced. That case involved F.B.I. agents, and considerations of

national security and effective law enforcement required that the identity of the agents be concealed. The defendants have no dispute with the practice of providing fictitious names for ascertained parties who may be harmed in some way by the publicity attendant upon litigation. See Roe v. Wade 410 U.S. 113, 93 S Ct 705, 35 L.Ed. 2d 147 (1973) reh.den. 410 U.S. 959.

The provision of the C.P.L.R. cited by plaintiff is inapplicable; the only rules of procedure that have any bearing on the question at all are F.R.C.P. 15 and 17, and the fact remains that the courts have not permitted "John Doe" complaints to be filed under these sections. Sigurdson v. Del Guersio 241 F 2d 480 (9th Cir., 1956); Craig v. United States 413 F 2d 854 (9th Cir., 1969) cert. den. 396 U.S. 987; National Nut Co. v. Kelling Nut Co. 61 F. Supp. 76 (D.C. N.D. Ill, 1945).

"In view of the absence of a common-law right to sue a party by a fictitious name, it seems that John Doe complaints should not be permitted in actions commenced in the federal courts..." Note, "Designation of Defendants By Fictitious Names - Use of John Doe Complaints." 46

IOWA L. Rev. 773 (1961)

POINT V

"MONEY" IS NOT AN INSTRUMENTALITY OF INTERSTATE COMMERCE.

In response to the defendants' contention that the complaint fails to allege the use of the mails or instrumentalities of interstate commerce, plaintiff submits an affidavit of PAUL W. SIEGE which again fails to allege any specific use of the mails or instrumentalities of interstate commerce. The affidavit states that "it is my understanding that monies invested by LOCAFRANCE were utilized by Defendants at their various warehousing installations throughout the country." (Affidavit of PAUL W. SIEGEat p. 7).

Firstly, the complaint does not allege that monies invested by LOCAFRANCE were ever received by any of the defendants except ISLI. Indeed, the truth of the matter is that LOCAFRANCE and ISLI were the only parties to this transaction. (See Affidavit of DAVID RAIBLE)

Secondly, the mere fact that ISLI allegedly made use of money provided by LOCAFRANCE is not sufficient to confer subject matter jurisdiction on this controversy. Defendants are advised of cases holding that telephone lines, airplanes, and railroads are "instrumentalities of

of interstate commerce" However, plaintiff has failed to cite any authority whatsoever for the proposition that "money" constitutes an instrumentality of interstate commerce. If this were the case, it would be totally inconceivable for there ever to be a intrastate offering of securities, unless stock brokers were to revert to a prehistoric barter system exchanging securities for fish, pelts, or grain.

Plaintiff has not alleged any instance of the use of the mails or instrumentalities of interstate commerce despite the fact that this is an essential element of its cause of action. Accordingly, plaintiff's complaint should be dismissed. Gordon v. Lipoff 320 F. Supp. 905 (D.C. W.D. Mo., 1970); Boone v. Baugh 308 F 2d 711 (8th Cir., 1962).

POINT VI

PLAINTIFF'S FIRST AND SIXTH CAUSES OF ACTION ARE BARRED BY THE APPLICABLE STATUTES OF LIMITATIONS.

In attempting to present its arguments regarding the statute of limitation issue, plaintiff states, "A contrary conclusion would reward those defendants who are most insidious..." Plaintiff misconceives the fundamental policy behind the statutes of limitations, which is not to "reward" defendants but rather to ensure that suits are brought within a reasonable time.

Defendants' contentions on this point are twofold. First, the defendants allege that the actions are barred because they were not brought within three years after the sale of the alleged securities. Securities Act of 1933, Sec. 13 (15 U.S.C. §77M). Second, the defendants allege that the actions are barred because they were not brought "within one year after the discovery of the untrue statement or the omission, or after such discovery should have been made by the exercise of reasonable diligence..." Securities Act of 1933, Sec. 13 (15 U.S.C. §77M) It is manifest that the plaintiff utterly ignores the second contention.

The arguments that plaintiff does make with regard to the first contention are of little relevance to the central issue at hand. Although plaintiff points out that the time of commencement of the present action is June 7, 1976 rather than July 21, 1976,as claimed by defendants, the difference of a mere 44 days does not materially alter the plaintiff's circumstances. Even with this additional 44 days, plaintiff still is confronted with the absolute bar of the three year provision as against plaintiff's claims upon the sale leaseback contracts of May 31, 1972 and December 7, 1972. Moreover, plaintiff's claim upon the sale leaseback contract of June 21, 1973, is barred as against any "John Doe" defendants. Kern v. Hettinger 303 F. 2d 333 (2d Cir., 1962).

More importantly, the plaintiff has failed to deny the second contention of the defendants, that the plaintiff's complaint is barred by the one year statute of limitations. Defendants have produced a memorandum from which it appears that LOCAFRANCE discovered the alleged fraud on or before March 27, 1974. (Exhibit "D" annexed to affidavit of DAVID RAIBLE) The plaintiff does not deny the memorandum. Rather, plaintiff conveniently ignores

the memorandum. An examination of the affidavit of PAUL W. SIEGE reveals that no factual statement as to when the discovery of the alleged fraud occurred is ever made by plaintiff. Consequently, defendants' contention that the alleged fraud was discovered on or before March 27, 1974, is deemed admitted, and dismissal of the first cause of action is warranted. Applegate v. Top Associates, Inc. 425 F. 2d 92 (2d Cir, 1970); Cowen v. New York Stock Exchange 371 F. 2d 661 (2d Cir., 1967); Arneil v. Ramsey 414 F. Supp. 334 (D.C. S.D. N.Y., 1976); Beckman v. Walter Kidde 316 F. Supp. 1321 (D.C. N.Y., 1970) Aff. 451 F 2d 593 Cert. Den. 408 U.S. 922.

POINT VII

IN LIGHT OF THE INSUBSTANTIALITY OF THE PLAINTIFF CORPORATION, AN UNDERTAKING FOR COSTS IS WARRANTED.

The defendants herein have requested that plaintiff be required to post security for costs under §11(e) of the Securities Act of 1933 (15 U.S.C. §77k(e)) and under Rule 2 of the Civil Rules for the Southern District of New York. Section 11(e) provides that costs, including reasonable attorneys fees, may be taxed against a party litigant where the suit was without merit. To assure that a party litigant will be able to pay these costs in the event that they are assessed against him, Section 11(e) authorizes the court to require an undertaking.

Supporting the defendants' request is the affidavit of Paul W. Siege which states that "LOCAFRANCE is a one-man corporation (myself) and... I employ only two assistants who are primarily secretaries. I find it indeed humourous for Mr. Raible to suggest that LOCAFRANCE (the alleged larger corporation) is attempting to harass the OVERMYER organization (the alleged smaller corporation)." (Affidavit of PAUL W. SIEGE at p. 7).

While Mr. Siege may chuckle at the prospect of the present litigation, the defendants herein are sincerely concerned about the responsibility of the plaintiff corporation. The defendants in the present action include a corporation, individuals and infants. As is indicated by the affidavits of DAVID RAIBLE and of IRWIN M. ECHTMAN, the costs that may be incurred by the various defendants are considerable.

From the admission of plaintiff's own affidavit, it is manifest that the plaintiff corporation has no continuity of existence and has no substance other than a vice-president and two assistants. In the event that costs are taxed against the plaintiff pursuant to Section 11(e) or Rule 2, will this corporation even be in existence? It is defendants' assertion that the statements of PAUL W. SIEGE themselves constitute ample justification for requiring the plaintiff to post security for costs.

Respectfully submitted,

Easton & Echtman, P.C.

Of Counsel
Irwin M. Echtman, Esq.

PLAINTIFF'S SUR REPLY MEMORANDUM OF LAW
(Filed November 9, 1976) (pp. 328a-342a)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

LOCAFRANCE U.S. CORPORATION,	:	
Plaintiff,	:	
-against-	:	
INTERMODAL SYSTEMS LEASING, INC., DANIEL H. OVERMYER, SHIRLEY OVERMYER, JOHN OVERMYER, ELIZABETH OVERMYER, EDWARD OVERMYER, BARBARA STRANG and "JOHN DOE", that name being fictitious, the true name of the defendant being unknown to plaintiff and the person intended being trustee f/t/b of defendants JOHN OVERMYER, ELIZABETH OVERMYER, EDWARD OVERMYER and BARBARA STRANG,	:	SURREPLY MEMORANDUM OF LAW 76 CIV. 2515 (CLB)
Defendants.	:	

PLAINTIFF'S SURREPLY MEMORANDUM OF LAW IN OPPOSITION TO DEFENDANTS' MOTION TO DISMISS

INTRODUCTION

Plaintiff LOCAFRANCE U.S. CORPORATION ("LOCAFRANCE") submits this Surreply Memorandum of Law in further opposition to the Defendants' Motion to Dismiss. The facts have previously been set forth in pertinent detail in the affidavit

of PAUL W. SIEGE, Vice-President of LOCAFRANCE. Unfortunately, the instant Surreply Memorandum of Law has been necessitated by Defendants' belated attempt to raise new issues in its papers served in reply to LOCAFRANCE's opposing affidavit and memorandum of law.

POINT I

REGARDLESS OF DEFENDANTS' CHARACTERIZATION, THE JUNE 18, 1974 SETTLEMENT AGREEMENT DOES NOT CONSTITUTE AN ACCORD AND SATISFACTION

In Point I of this Reply Memorandum, defendants seem to argue that because LOCAFRANCE has instituted separate and independent actions against sublessees of INTERMODAL for recovery of equipment which LOCAFRANCE permitted the sublessees to sublease LOCAFRANCE has made an election of remedies and is therefore precluded from pursuing the instant claims. It is believed that what defendants are in fact contending is that because LOCAFRANCE relied and acted on a minor portion of the terms of the settlement agreement, the defendants have satisfied the same. Accordingly, the an "accord" (the settlement agreement) and "satisfaction" (LOCAFRANCE's reliance on a portion of the accord) has been effected. This position is totally without merit. As indicated in the LOCAFRANCE Memorandum of Law In Opposition (Point II pps. 11-16) an "accord and satisfaction" does not exist until the entire accord is satisfied. None of the actions which LOCAFRANCE instituted have been satisfied in whole or in part. Moreover, even if satisfaction had occurred, such actions only constitute

a very small portion of INTERMODAL's liability to LOCAFRANCE and the remaining obligations under the settlement agreement have not been performed, and, accordingly, the "accord" has not been "satisfied". Thus, an "accord and satisfaction" does not exist and LOCAFRANCE can therefore not be precluded from pursuing the underlying obligations of the accord, Id.

Alternatively, if defendants are in fact arguing that LOCAFRANCE has made an election of remedies pursuant to §3002 of the CPLR their position is equally untenable. Assuming that the doctrine of election of remedies is applicable in the first instance, it is clear beyond a preadventure of doubt that an election is not made in connection with an alternative action against third parties (such as the INTERMODAL sublessees) until a judgment is recovered and satisfied. Thus, in City of New York v. Bronx County Trust Co., 261 N.Y. 64, 74 (1933) the Court stated:

> "Election of remedies is a defense only 'when a choice is exercised between remedies which proceed upon irreconcialable claims of right' and has no application to the pursuit of remedies against parties concurrently liable, short of payment and satisfiction. (citations omitted) (emphasis supplied)

See also Lumber Mut. Casualty Ins. Co. of New York v. Friedman, 176 Misc. 703, 28 N.Y.S. 2d 506 (Sup Ct 1941) and Siegel, Practice Commentaries, C3002: 20 (McKenney 1974). Since the actions instituted by LOCAFRANCE against the sublessees have not been satisfied, such actions can not be deemed an election of remedies by LOCAFRANCE. The cases cited by defendants are collectively inapplicable for a number of reasons; e.g. decisions which were prior to the enactment of §3002 of the Civil Practice Law and Rules which embodies the liberal policy of New York against invoking the bar of the election of remedies doctrine (see Siegel, C 3002 (McKinney, 1974)), decisions which do not relate to the doctrine of election of remedies in the first instance, decisions where an accord is enforceable only because a total satisfaction has been made and decisions where a contract clearly containing an express liquidated damages provision precludes resort to an alternative remedy for breach of contract. None of the cases are directly in point and, at best, are only instructive with respect to general principles of law which are irrelevant to this action and, in any event, primarily concern the state of the law prior to the enactment of the Civil Practice Law and Rules.

As an afterthought, Defendants, argue that the execution of a release by LOCAFRANCE and INTERMODAL, in the fact of Defendants almost conceded failure to comply with the settlement agreement, has some significance. As Defendants are obviously well

aware the execution of releases by the parties was conditioned, naturally, upon performance of the agreement and the absence of such performance,such a release is inoperative and of no effect.

POINT II

PLAINTIFF IS NOT PROHIBITED IN FEDERAL COURT FROM DESIGNATING A DEFENDANT AS "JOHN DOE"

As has already been noted the Federal Rules of Civil Procedure do not directly deal with the use of "John Doe" complaints. However, our Court of Appeals has held that:

> "... state law may be adopted by federal law where congress has not spoken, in order to fill the interstices of federal enactments..." Banana Distributors Inc. v. United Fruit Company 269 F. 2d 790, 794 (2nd Cir. 1959).

Accordingly, despite Defendants apparent feeling to the contrary, §1024 of the New York Civil Practice Law and Rules is quite applicable. Frederick v. Baxter Arms Corporation 39 F. Supp. 609 (E.D.N.Y. 1941). In commenting upon the cases cited by LOCAFRANCE, Defendants have apparently omitted to consider the footnote in Sigurdson v. Del Guercio 241 F. 2d 480, 482 (9th Cir., 1956) wherein the Court indicated that "John Doe" complaints are dangerous at any time" in diversity cases. Furthermore, Defendants have

failed to note that in Sigurdson, despite the fact that it was held that the "John Doe" complaint ought not be used, the Court did not dismiss the complaint as to the fictitious defendants. See also, Tolefree v. Ritz 382 F. 2d 566, 567 (9th Cir. 1967); Craig v. United States 413 F. 2d 854 (9th Cir. 1969).

In National Nut Co. v. Kelling Nut Co. 361 F. Supp. 76, D. Ill. (1945) the Court dismissed the complaint as to the unnamed defendants solely because plaintiff did not know, or allege, that the fictitious defendants were actual persons whose names merely were not known, implying that the Court would not allow just "any additional defendants" (who were not actually named in the complaint) which is not the case herein. The Trustee is an actual person, whose name has not been disclosed by Defendants despite a request by LOCAFRANCE.

Defendants seemingly rely further on Wilder v. Doe 30 F. Supp. 869 (E.D. Pa. 1939) where the "John Doe" designation was disallowed because it was being used solely to subvert a criminal statute.

Defendants in citing Mississippi Valley Barge Line Co. v. Bulk Carriers, Ltd., 249 F. Supp. 743, 746, (S.D.N.Y. 1965) omit to point out that therein the plaintiffs stipulated that the fictitious defendants be dismissed.

Although Defendants state that "plaintiffs' reliance on Lowenstein v. Rooney 401 F. Supp. 952 (E.D.N.Y. 1975) is misplaced," the Court allowed the use of the "John Doe" complaint precisely because the subject persons are real persons whose names were not yet known to plaintiff. The reasoning of the Court was not based on "national security and effective law enforcement."

Defendants concede that the cases cited by LOCAFRANCE were "dismissed on other grounds" which is precisely the point. Fictitious defendants are not dismissed merely for being fictitious defendants. Dismissal is unwarranted unless diversity is involved, and certainly not where the defendant is a real person whose name is not presently known.

POINT III

THE STATUTE OF LIMITATIONS IS NOT A BAR TO THE FIRST AND SIXTH CLAIMS

In their Reply Memorandum of Law (Point VI), defendants maintain that regardless of whether the first (§12(2) of the Securities Act of 1933) and sixth (common law negligence) claims of LOCAFRANCE are barred by the three (3) year statute of limitations, such claims are, in any event, untimely because not commenced within one (1) year from discovery of the misrepresentation or omission.*

Defendants predicate this contention on the fact that LOCAFRANCE discovered the defendants' fraud on March 27, 1974 and therefore was required by §13 to institute an action by March 28, 1975. The fallacy in this argument** is that even assuming the fraud was discovered on March 27, 1974, defendants are equitably estopped from asserting the one (1) year limitation contained in §13 as a bar to the §12(2) claim.

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* With respect to this position, it is presumed that defendants are referring only to the first claim of LOCAFRANCE which is predicated on §12(2) and rely on the one (1) year limitation in §13 of the Securities Act of 1933. There does not appear to be any authority for applying a one (1) year statute of limitations from time of discovery to the sixth claim for common law negligence.

** Aside from the fact that LOCAFRANCE does not concede that discovery occurred on March 27, 1974, thereby presenting a question of fact sufficient to warrant denial of a dismissal of the §12(2) claim based on the one (1) year statute of limitation. See cases cited in LOCAFRANCE Memorandum of Law In Opposition, P. 29.

As indicated in Points V and VI of the LOCAFRANCE Memorandum of Law In Opposition (pps. 25 through 32), the settlement agreement entered into between LOCAFRANCE and the defendants on June 18, 1974* and the representations of defendants for more than a year thereafter that the agreement be performed precluded LOCAFRANCE from instituting an action against the defendants with respect to any of the sale-leaseback financing arrangements until August, 1975. Indeed, had LOCAFRANCE instituted an action before March, 1975, it would have been in breach of the settlement agreement.

This is, accordingly, the precise circumstance for which the doctrine of equitable estoppel was formulated and should consequently be invoked to avoid permitting the defendants to benefit from their own wrongdoing. In this context, and contrary to the allegation of defendants, the purpose of the st ute of limitations is not subverted.

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* Less than one (1) year after the alleged March, 1974 discovery.

POINT IV

DEFENDANTS HAVE OFFERED NO AUTHORITY FOR THE CONTENTION THAT DEFENDANTS JOHN OVERMYER, ELIZABETH OVERMYER AND EDWARD OVERMYER ARE NOT CONTROLLING PERSONS.

Defendants submit in support of their contention that Defendants JOHN OVERMYER, ELIZABETH OVERMYER and EDWARD OVERMYER are not controlling persons, only the sworn statement of Defendant DANIEL H. OVERMYER. No affidavit of the subject defendants has been submitted. LOCAFRANCE believes,* but has not yet been able to document through pre-trial discovery, that the stock of Defendant INTERMODAL SYSTEMS LEASING, INC. ("INTERMODAL") is owned by trusts created in favor of such Defendants. Inasmuch as counsel for Defendants has refused, or has been unable, to provide information warranting dismissal, Defendants' request is ill-conceived. If in fact such ownership exists, a serious issue is presented as to the status of those Defendants, or the beneficial trusts, as controlling persons, a question which cannot be resolved at this time.** However, LOCAFRANCE submits that until such time as the identity of the Trustee is disclosed and facts surrounding ownership of the stock of INTERMODAL can be revealed, Defendants' request

* This belief is based on testimony adduced during the action instituted by Defendants in Chicago.
** Should it be discovered that no such ownership exists, LOCAFRANCE shall stipulate to dismiss said Defendants.

for dismissal at this juncture is unwarranged. In any event the case cited by Defendants, Applegate v. Top Associates, Inc. 425 F. 2d 92 (2d Cir. 1970) did not involve the issue of a controlling person and did not involve a motion to dismiss.

POINT V

LOCAFRANCE DOES NOT CLAIM THAT MONEY IS AN INSTRUMENTALITY OF INTERSTATE COMMERCE

To the extent that Defendants have misconstrued LOCAFRANCE's position it is not claimed that "money" is an instrumentality of interstate commerce. LOCAFRANCE has already pointed out that the complaint adequately plead the use of the means or instrumentalities of interstate commerce (See pps. 21-24, Plaintiff's Memorandum of Law In Opposition). In addition Mr. SIEGE, in his affidavit, further illuminates the use of means or instrumentalities of interstate commerce (See p. 7 SIEGE affidavit), which Defendants concede is sufficient to confer subject matter jurisdiction. At no point, however, is it argued that "money" is an instrumentality of interstate commerce; only that monies obtained by Defendants from LOCAFRANCE were utilized on an interstate basis, tending to show that said monies were transmitted through means or instrumentalities of interstate commerce.

POINT VI

LOCAFRANCE SHOULD NOT BE REQUIRED TO POST AN UNDERTAKING

Defendants' attempt to distort the language of Mr. SIEGE's affidavit belies their inability to focus on the substance of this dispute. Clearly, Mr. SIEGE's statement referred to Defendants' ludicrous contention that LOCAFRANCE was attempting to harass Defendants. Furthermore, Defendants have, without any factual basis whatever, questioned the financial stability of LOCAFRANCE. For Defendants to state that "Plaintiff corporation has no continuity of existence and has no substance other than a vice-president and two assistants" is highly irresponsible and untrue. Clearly, Defendants have failed to demonstrate any support for their position that LOCAFRANCE should be required to post an undertaking pursuant to §11(e).

CONCLUSION

Based upon all of the foregoing, it is respectfully requested that Defendants' motion be denied in all respects.

Respectfully Submitted,

REGAN GOLDFARB HELLER WETZLER
& QUINN
ATTORNEYS FOR PLAINTIFF
445 Park Avenue
New York, New York 10022
(212)754-3000

OF COUNSEL:

Jan Atlas
Robert Aronson
John Conway

HEARING ON MOTION BEFORE BRIEANT, D.J.
(Dated November 9, 1976) (pp. 343a-355a)

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

----------x

LOCAFRANCE U. S. CORPORATION,

Plaintiff 76 Civ 2515

vs.

INTERMODAL SYSTEMS LEASING INC., et. al.

Defendants.

----------x

Before:

HON. CHARLES L. BRIEANT,

District Judge

New York, N.Y.
November 9, 1976 - 4 p.m.

Appearances:

MESSRS: REGAN GOLDFARB HELLER, WITZLER & QUINN
Attorneys for plaintiff
445 Park Avenue
New York, N.Y.
By: JAN ATLAS, ESQ., of counsel

MESSRS: EASTON & ECHTMAN
Attorneys for defendant
6 East 39th Street
New York, N.Y.
By: IRWIN M. ECHTMAN, ESQ., of counsel

(Case called - both sides answer"ready.")

THE COURT: Gentlemen, we are here in connection with this motion on November 5, and, as I recall it, at that time counsel agreed that the name of the Trustee, the trust or trusts for these various infants who are sued here, would be made available, and I think I was informed at that time by Mr. Echtman that you didn't know the name of the Trustee.

MR. ECHTMAN: That is correct, your Honor.

THE COURT: Now, will you please identify these trusts and name the trustee at this time.

MR. ECHTMAN: I have obtained the name of the trustee. I think the question really was directed to the identity of the shareholder or shareholders of Intermodal during the period in question, and I advised Mr Atlas yesterday that the sole shareholder is a trust for the benefit of the infants, or the children, I should say, the children of Daniel and Shirley Obermeier, and the executor, as I advised Mr. Atlas yesterday, is the Bank of Butterfield Executor and Trustee Co, also known as BETCO, located in Hamilton, Bermuda.

THE COURT: This is a trustee, isn't it, not an executor?

MR. ECHTMAN: I was given the name as an executor for the trust, but I believe that is probably the Bermuda

equivalent of trustee.

THE COURT: The beneficiaries, those are the persons we referred to as the children.

MR. ECHTMAN: Namely, Barbara Obermeier, Edward C. Obermeier and Elizabet Obermeier.

THE COURT: Barbara is now known as Barbara Strand?

MR. ECHTMAN: That is correct. I have asked Mr. Atlas if he would withdraw his action as to the individual infants since none of them at any time were shareholders in their own right.

THE COURT: They have never been shareholders?

MR. ECHTMAN: They have never been shareholders.

THE COURT: You don't relaly dispute that, do you, Mr. Atlas?

MR. ATLAS: No basis for disputing that, your Honor.

THE COURT: All right. Then I will note for the record the fact that counsel have agreed that the name of the trustee of this trust will be substituted as the defendant for the infant defendants previously named, because they really are not controlling parties in view of their age.

I think their age is already set forth in the motion papers.

MR. ATLAS: Your Honor, Mr. Echtman did call me yesterday afternoon to give me that information. I raised with him a problem which I didn't expect him to have the answer to, but that I have not yet resolved to my satisfaction, and that is my ability to-- whether I have jurisdiction or can obtain jurisdiction over this executor.

Mr. Echtman has advised me that he believed it was the executor that owned the shares and not individual--

THE COURT: An executor, you know, is a representative of the deceased person.

MR. ATLAS: I'm using the word executor because that is what I was advised--

THE COURT: I heard him use that word this afternoon, and it is puzzling.

As I understand it, this is an action under the Securities Act, and if anything was done here, you can get "long arm" and you can serve people all over the country. Of course, if you can't identify them you can't serve them. But I don't see why you shouldn't be able to serve them.

MR. ATLAS: They are located in Hamilton, Bermuda. I don't know what effect that may have.

THE COURT: Did they commit a tort somewhere in New York, do you think?

MR. ATLAS: In my view they have.

THE COURT: I am not going to waste any more time on this point. I am going to make my findings on the record right now on this motion, and I am going to dispose of it.

MR. ECHTMAN: Your Honor, the motion, of course, covers points beyond--

THE COURT: Won't you please let me speak and I'll hear you later, if it's necessary.

I will state for the record that by motion filed September 8, 1976, and adjourned several times, the defendants, Intermodal Systems Leasing Inc., which I will refer to for convenience sake as Intermodal, and Daniel H. and Shirley and John, and Elizabeth, and Edward Obermeier, moved to dismiss because of various contentions, and these were:

First, that the actions were barred by an accord and satisfaction;

Secondly, that it was barred by release.

They also moved to strike paragraphs of the complaint which purport to state a Section 12(1) action on the ground that it is barred by limitations.

Alternatively, these defendants also sought a more definite statement and to strike the sixth cause of action on the ground that it is barred by the applicable statute of limitations, and also to dismiss for failure to state a

claim or for summary judgment-- it is not clear to me which-- on the ground that there was no use of any instrumentality in inter-state commerce, or the facilities of any national securities exchange in connection with the 10(b)(5) claims.

The motion also seeks to vacate the service of process on John, Elizabeth and Edward Obermeier, as well as on Intermodal, for insufficiency of service of process and also to dismiss for failure to comply with Rule 9 (b) of the Federal Rules of Civil Procedure, in that the fraud must be stated with particularity, or to require a filing of a more definite statement as to that matter;

and the motion seeks to dismiss the fourth, fifth and sixth causes of action on the ground the Court lacks jurisdiction over the subject matter;

and to dismiss as to John, Elizabeth and Edward because they are not controlling persons, and also Barbara;

and security for costs was requested.

I think I previously indicated to you informally on November 5 that I would not require the security for costs, but I did not make that in the form of a finding or direction, and I don't think I have to reach that question.

I really must say that defendants have certainly made hard going of this motion, and I must say, you have presented a whole raft of arguments, some of which just lead

nowhere.

For example, the contention that the people have not been properly served with process when they are here with attorneys, and it would be very simple to go out and serve them properly again. They are all residents of the United States, with the possible exception of that trustee in Bermuda, who was not a party at the time the motions were made; and in a securities action, as you all know, they can be served anywhere in the United States.

I must say, you have really made hard going of this matter. However, an analysis of the complaint shows me that all the claims pleaded here arose out of certain sale and leaseback agreements,having to do with tangible personal property, which were entered into between the plaintiff and the defendant Intermodal, and it is asserted that these transactions involved sale of a security, using inter-state means, which is a highly debatable point; that all of the misrepresentations and material omissions took place at least prior to the leases or the transactions relied upon as being the sale of the security.

The plaintiff is asserting a claim under Section 12 (1) of the 1933 Act, because of a failure to issue a prospectus, and a claim for recision under Section 17(a) of that Act, or for damages.

Under the third cause of action, the inevitable Rule 10(b)(5) claim arising out of the same facts.

On the fourth claim, Locafrance has pleaded a Martin Act violation under New York State law, which would only be a pendant claim, in any event, because there is no diversity in this case.

The fifth and sixth claims are also state law claims, to the extent they are anything.

The record before me is clear that in 1974 the defendant Intermodal here was a plaintiff in an action in which the plaintiff Locafrance U.S. Corporation was the defendant, in the Chancery Division of the Circuit Court of Cooke County, Illinois, a state court, and as a result of that litigation these two parties, Locafrance, the plaintiff here, and Intermodal, one of the defendants here, entered into a written agreement dated as of June 28, 1974, and made as of the 18 day of June, 1974, which is annexed as Exhibit B to the motion to dismiss here, and the genuineness of which is not in dispute before me.

On June 18, 1974, Locafrance U.S. Corporation excecuted a traditional form general release in favor of the defendant Intermodal Systems Leasing, Inc. This was given on the usual form No. B111, the so-called Blumberg Form of General Release. It is a paper with which all lawyers are

familiar. It was acknowledged and delivered in New York and duly notarized. It is not ambiguous. No resort to parole evidence is needed here in connection with this paper.

I believe it to be controlled by the law, either of New York or Illinois, but since it was executed and delivered here in New York, I am assuming New York law is no different, in any event.

The document, the general release, has the well known effect of releasing and forever discharging Intermodal Systems Leasing Inc., its successors and assigns, of and from all manner of actions, causes of actions, suits, debts, dues, sums of money-- I am reading from the release itself-- accounts, reckonings, bills, bonds, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, extents, executions, claims and demands whatsoever in law, in admiralty, or in equity, which the person signing the release ever had, now has, or which it or its successors hereafter can, shall or may have, for, upon, or by reason of any matter, cause or thing whatsoever, from the beginning of the world to the date of the release, which is June 13, 1974.

That is just what it says. Papers like that are signed every day in every law office in this city. The release contains a provision to the effect that it is

dependant upon an agreement dated the same date becoming effective in accordance with its terms.

It does not state that the effectiveness of the release is conditioned upon performance of that agreement, but expressly says merely upon it becoming effective in accordance with its terms. It cannot be claimed the settlement agreement of the Cook County case and did not become effective in accordance with its terms.

That it was not fully performed is besides the point, and all of this interesting law which has been quoted to the Court about "accord and satisfaction" is also besides the point.

We are talking here about a general release for which there was adequate consideration under New York law, and which, by its terms, became effective on the discontinuance and settlement of the Cook County litigation.

This type of release form and its legal effect is so clear, and so well known to lawyers who use it, that it is preposterous to assert a claim of this sort following the execution and delivery of that document.

For that ground alone, the defendants are entitled to summary judgment dismissing the complaint and denying all relief, and it is so ordered.

The Court does not reach the question of

statute of limitations, and I don't need to get into the thorny thicket of when a security is not a security. I suppose if a wharehouse receipt for whisky can be a security in this Circuit, that probably leases of fork-lift trucks can be securities perhaps they are, perhaps they aren't. I am not going to reach that.

I want to say to you that bringing this case with the extant release outstanding, which was entered as a result of settling a law suit in state court in Cook County, Illinois, is just plainly and simply frivolous, in my opinion, and we don't have to endure that type of procedure in this court. The release is an absolute defense.

I find there is accordingly no contested factual issue in this case, and that summary judgment is proper here, and it is granted on the foregoing grounds, and the clerk will cause judgment to be entered on the minutes, the clerk's minutes, pursuant to the Rule.

That is all, gentlemen.

MR. ATLAS: May I be heard, your Honor?

THE COURT: I have rendered my decision. I have read all these papers. I don't want to hear anything more.

I don't know how you can bring a law suit when

you have a release like that in the picture.

MR. ATLAS: May I just make one point?

THE COURT: Certainly.

MR. ATLAS: Under what I understand to be your opinion, your Honor, that has the effect of allowing any party to a dispute to frivolously enter into a release, promise the world, never intend to perform, just ignore its responsibilities, and then, when the obligations which exist to the other party are attempted to be enforced, to just wave that release in front of them and say, "Sorry, that's it. The ball game is over."

THE COURT: Yes.

MR. ATLAS: There is no evidence in the record here, your Honor, absolutely no evidence of any intent to make that release effective no matter what. You indicated--

THE COURT: This is not a diversity case, you know.

MR. ATLAS: That's true.

THE COURT: You are here under a securities law claim, and that claim is merged in that release, It's the same as if you had made a novation.

You can sue for a breach of anything that was promised to you that was not performed under the settlement agreement in Illinois, but you are not going to maintain a Section 12(1) claim or a 10 (b)(5) claim against the face

of that release because that release means what it says.

MR. ATLAS: Your Honor, there was no evidence in the record submitted by the defendants that the securities fraud claim was ever considered as part of the Intermodal action instituted in Chicago--

THE COURT: I don't care. It is a general release; everything, from the beginning of the world to the date of these presence.

You sign those releases every day in your office and you know what it means. Every lawyer in New York issues those papers.

I think I have heard enough, Mr. Atlas. Go tell it to the Court of Appeals. It is a ridiculous law suit.

Don't come in with nonsense, Mr. Echtman, when you have a general release. Your papers are rather ridiculous, too.

(Time noted: 4:20 p.m.)

JUDGMENT APPEALED FROM
(Filed December 8, 1976)

(pp. 356a-357a)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- -x

LOCAFRANCE U.S. CORPORATION
Plaintiff

-against-

INTERMODAL SYSTEMS LEASING, INC., DANIEL H. OVERMYER, SHIRLEY OVERMYER, JOHN OVERMYER, ELIZABETH OVERMYER, EDWARD OVERMYER, BARBARA STRANG and "JOHN DOE", that name being fictitious, the true name of the defendant being unknown to plaintiff and the person intended being trustee f/t/b of defendants JOHN OVERMYER, ELIZABETH OVERMYER, EDWARD OVERMYER, and BARBARA STRANG
Defendants.

- -x

U.S. DISTRICT COURT
FILED
NOV. 16, 1976
S.D. OF N.Y.

76 Civil 2515 (CLB)

JUDGMENT

Defendants having moved the Court for summary judgment, pursuant to Rule 56, of the Federal Rules of Civil Procedure, and the said motion having come on to be heard before the Honorable Charles L. Brieant, United States District Judge, and the Court thereafter on November 10, 1976, having handed down its memorandum endorsement granting the said motion, it is,

ORDERED, ADJUDGED and DECREED: That defendants INTERMODAL SYSTEMS LEASING, INC., DANIEL H. OVERMYER, SHIRLEY OVERMYER, JOHN OVERMYER, ELIZABETH OVERMYER, EDWARD OVERMYER, BARBARA STRANG and "JOHN DOE", that name being ficitious, the true

name of the defendant being unknown to plaintiff and the person intended being trustee f/t/b/ of defendants JOHN OVERMYER, ELIZABETH OVERMYER, EDWARD OVERMYER, and BARBARA STRANG, have judgment against plaintiff LOCAFRANCEU.S. CORPORATION dismissing the complaint.

Dated: New York, N.Y.
November 16, 1976

s/ Raymond F. Burghardt
Clerk

A 202 Affidavit of Personal Service of Papers

FEDERAL COURT
SECOND CIRCUIT

LUTZ APPELLATE PRINTERS, INC.

LOCAFRANCE U.S. CORPORATION,
Plaintiff-Appellant,

- against -

INTERMODAL SYSTEMS LEASING, INC., DANIEL H. OVERMYER, SHIRLEY OVEEMYER, JOHN OVERMYER ELIZABETH OVERMYER, EDWARD OVERMYER, ETC.,
Defendants-Appellees,

Index No.

Affidavit of Personal Service

STATE OF NEW YORK, COUNTY OF *ss.:*

I, Victor Ortega, *being duly sworn, depose and say that deponent is not a party to the action, is over 18 years of age and resides at* 1027 Avenue St. John, Bronx, New York.

That on the 14th *day of* Feb. *19* 77 *at* 6 East 39 th St. New York, N.Y.

deponent served the annexed [signature] *upon* Easton & Echtman, Esqs.

the *in this action by delivering a true copy thereof to said individual personally. Deponent knew the person so served to be the person mentioned and described in said papers as the* *herein,*

Sworn to before me, this 14th *day of* Feb. *19* 77

[signature]

ROBERT T. BRIN
NOTARY PUBLIC, State of New York
No. 31-0418950
Qualified in New York County
Commission Expires March 30, 1977

[signature]
Victor Ortega